

Introduced by Senator WolkFebruary 22, 2013

An act to repeal Sections 14661 and 14661.1 of the Government Code, to amend Section 32132.5 of the Health and Safety Code, and to add Article 6 (commencing with Section 10186) to Chapter 1 of Part 2, and Article 4 (commencing with Section 22160) to Chapter 2 of Part 3, of Division 2 of, and to repeal Sections 20133, 20175.2, 20193, 20209, 20301.5, and 20688.6 of, and to repeal Article 6.7 (commencing with Section 20209), and Article 22 (commencing with Section 20360), of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to design-build.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as introduced, Wolk. Design-build.

Existing law authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and various local agencies to use the design-build procurement process for specified public works under different laws.

This bill would repeal those authorizations, and enact provisions that would authorize the Department of General Services, the Department of Corrections and Rehabilitation, and those local agencies, as defined, to use the design-build procurement process for specified public works. The bill would require moneys that are collected under these provisions to be deposited into the State Public Works Enforcement Fund, subject to appropriation by the Legislature. The bill would provide that specified information related to the procurement of design-build contracts is exempt from the California Public Records Act. The bill would require specified information to be verified under penalty of perjury. By

expanding the crime of perjury, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to consolidate
2 existing design-build statutes and eliminate inconsistencies in
3 statutory language by adopting authority of general application to
4 identified agencies and repealing superseded sections.

5 SEC. 2. Section 14661 of the Government Code is repealed.

6 ~~14661. (a) For the purposes of this section, the definitions in~~
7 ~~subdivision (a) of Section 13332.19 shall apply.~~

8 ~~(b) Notwithstanding any provision of the Public Contract Code~~
9 ~~or any other provision of law, when the Legislature authorizes the~~
10 ~~use of the design-build construction procurement process for a~~
11 ~~specific project, the Director of General Services may contract and~~
12 ~~procure state office facilities and other buildings, structures, and~~
13 ~~related facilities pursuant to this section.~~

14 ~~(c) Prior to contracting with a design-build entity for the~~
15 ~~procurement of state office facilities and other state buildings and~~
16 ~~structures, the director shall:~~

17 ~~(1) Prepare a program setting forth the performance criteria for~~
18 ~~the design-build project. The performance criteria shall be prepared~~
19 ~~by a design professional duly licensed and registered in the State~~
20 ~~of California.~~

21 ~~(2) (A) Establish a competitive prequalification and selection~~
22 ~~process for design-build entities, including any subcontractors~~
23 ~~listed at the time of bid, that clearly specifies the prequalification~~
24 ~~criteria, and states the manner in which the winning design-build~~
25 ~~entity will be selected.~~

26 ~~(B) Prequalification shall be limited to consideration of all of~~
27 ~~the following criteria:~~

1 ~~(i) Possession of all required licenses, registration, and~~
2 ~~credentials in good standing that are required to design and~~
3 ~~construct the project.~~

4 ~~(ii) Submission of evidence that establishes that the design-build~~
5 ~~entity members have completed, or demonstrated the capability~~
6 ~~to complete, projects of similar size, scope, or complexity, and~~
7 ~~that proposed key personnel have sufficient experience and training~~
8 ~~to competently manage and complete the design and construction~~
9 ~~of the project.~~

10 ~~(iii) Submission of a proposed project management plan that~~
11 ~~establishes that the design-build entity has the experience,~~
12 ~~competence, and capacity needed to effectively complete the~~
13 ~~project.~~

14 ~~(iv) Submission of evidence that establishes that the design-build~~
15 ~~entity has the capacity to obtain all required payment and~~
16 ~~performance bonding, liability insurance, and errors and omissions~~
17 ~~insurance, as well as a financial statement that assures the~~
18 ~~department that the design-build entity has the capacity to complete~~
19 ~~the project.~~

20 ~~(v) Provision of a declaration certifying that applying members~~
21 ~~of the design-build entity have not had a surety company finish~~
22 ~~work on any project within the last five years.~~

23 ~~(vi) Provision of information and a declaration providing detail~~
24 ~~concerning all of the following:~~

25 ~~(I) Any construction or design claim or litigation totaling more~~
26 ~~than five hundred thousand dollars (\$500,000) or 5 percent of the~~
27 ~~annual value of work performed, whichever is less, settled against~~
28 ~~any member of the design-build entity over the last five years.~~

29 ~~(II) Serious violations of the Occupational Safety and Health~~
30 ~~Act, as provided in Part 1 (commencing with Section 6300) of~~
31 ~~Division 5 of the Labor Code, settled against any member of the~~
32 ~~design-build entity.~~

33 ~~(III) Violations of federal or state law, including, but not limited~~
34 ~~to, those laws governing the payment of wages, benefits, or~~
35 ~~personal income tax withholding, or of Federal Insurance~~
36 ~~Contributions Act (FICA) withholding requirements, state disability~~
37 ~~insurance withholding, or unemployment insurance payment~~
38 ~~requirements, settled against any member of the design-build entity~~
39 ~~over the last five years. For the purposes of this subclause, only~~
40 ~~violations by a design-build member as an employer shall be~~

1 deemed applicable, unless it is shown that the design-build entity
2 member, in his or her capacity as an employer, had knowledge of
3 his or her subcontractor's violations or failed to comply with the
4 conditions set forth in subdivision (b) of Section 1775 of the Labor
5 Code.

6 ~~(IV) Information required by Section 10162 of the Public~~
7 ~~Contract Code.~~

8 ~~(V) Violations of the Contractors' State License Law (Chapter~~
9 ~~9 (commencing with Section 7000) of Division 3 of the Business~~
10 ~~and Professions Code), excluding alleged violations or complaints.~~

11 ~~(VI) Any conviction of any member of the design-build entity~~
12 ~~of submitting a false or fraudulent claim to a public agency over~~
13 ~~the last five years.~~

14 ~~(vii) Provision of a declaration that the design-build entity will~~
15 ~~comply with all other provisions of law applicable to the project,~~
16 ~~including, but not limited to, the requirements of Chapter 1~~
17 ~~(commencing with Section 1720) of Part 7 of Division 2 of the~~
18 ~~Labor Code.~~

19 ~~(C) The director, when requested by the design-build entity,~~
20 ~~shall hold in confidence any information required by clauses (i)~~
21 ~~to (vi), inclusive.~~

22 ~~(D) Any declaration required under subparagraph (B) shall state~~
23 ~~that reasonable diligence has been used in its preparation and that~~
24 ~~it is true and complete to the best of the signer's knowledge. A~~
25 ~~person who certifies as true any material matter that he or she~~
26 ~~knows to be false is guilty of a misdemeanor and shall be punished~~
27 ~~by not more than one year in a county jail, by a fine of not more~~
28 ~~than five thousand dollars (\$5,000), or by both the fine and~~
29 ~~imprisonment.~~

30 ~~(3) (A) Determine, as he or she deems in the best interests of~~
31 ~~the state, which of the following methods listed in subparagraph~~
32 ~~(B) will be used as the process for the winning design-build entity.~~
33 ~~The director shall provide a notification to the State Public Works~~
34 ~~Board, regarding the method selected for determining the winning~~
35 ~~design-build entity, at least 30 days prior to publicizing the~~
36 ~~design-build solicitation package.~~

37 ~~(B) The director shall make his or her determination by choosing~~
38 ~~one of the following methods:~~

39 ~~(i) A design-build competition based upon performance, price,~~
40 ~~and other criteria set forth by the department in the design-build~~

1 solicitation package. The department shall establish technical
2 criteria and methodology, including price, to evaluate proposals
3 and shall describe the criteria and methodology in the design-build
4 solicitation package. Award shall be made to the design-build
5 entity whose proposal is judged as providing the best value in
6 meeting the interest of the department and meeting the objectives
7 of the project. A project with an approved budget of ten million
8 dollars (\$10,000,000) or more may be awarded pursuant to this
9 clause.

10 (ii) A design-build competition based upon performance and
11 other criteria set forth by the department in the design-build
12 solicitation package. Criteria used in this evaluation of proposals
13 may include, but need not be limited to, items such as proposed
14 design approach, life-cycle costs, project features, and functions.
15 However, any criteria and methods used to evaluate proposals shall
16 be limited to those contained in the design-build solicitation
17 package. Award shall be made to the design-build entity whose
18 proposal is judged as providing the best value, for the lowest price,
19 meeting the interests of the department and meeting the objectives
20 of the project. A project with an approved budget of ten million
21 dollars (\$10,000,000) or more may be awarded pursuant to this
22 clause.

23 (iii) A design-build competition based upon program
24 requirements and a detailed scope of work, including any
25 performance criteria and concept drawings set forth by the
26 department in the design-build solicitation package. Award shall
27 be made on the basis of the lowest responsible bid. A project with
28 an approved budget of two hundred fifty thousand dollars
29 (\$250,000) or more may be awarded pursuant to this clause.

30 (4) For the purposes of this subdivision, the following definitions
31 shall apply:

32 (A) “Best interest of the state” means a design-build process
33 that is projected by the director to reduce the project delivery
34 schedule and total cost of a project while maintaining a high level
35 of quality workmanship and materials, when compared to the
36 traditional design-bid-build process.

37 (B) “Best value” means a value determined by objective criteria
38 that may include, but is not limited to, price, features, functions,
39 life cycle costs, experience, and other criteria deemed appropriate
40 by the department.

~~(d) The Legislature recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all subcontractors at the time of the award. As a result, the subcontractor listing requirements contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code can create a conflict with the implementation of the design-build process by requiring all subcontractors to be listed at a time when a sufficient set of plans may not be available. It is the intent of the Legislature to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that retains protection for subcontractors while enabling design-build projects to be administered in an efficient fashion. Therefore, all of the following requirements shall apply to subcontractors, licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, that are employed on design-build projects undertaken pursuant to this section:~~

~~(1) The department, in each design-build solicitation package, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the department shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the department specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total amount of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2):~~

1 ~~(2) All subcontracts that were not to be performed by the~~
2 ~~design-build entity in accordance with paragraph (1) shall be~~
3 ~~competitively bid and awarded by the design-build entity, in~~
4 ~~accordance with the design-build process set forth by the~~
5 ~~department in the design-build solicitation package. The~~
6 ~~design-build entity shall do all of the following:~~

7 ~~(A) Provide public notice of the availability of work to be~~
8 ~~subcontracted in accordance with Section 10140 of the Public~~
9 ~~Contract Code.~~

10 ~~(B) Provide a fixed date and time on which the subcontracted~~
11 ~~work will be awarded in accordance with Section 10141 of the~~
12 ~~Public Contract Code.~~

13 ~~(C) As authorized by the department, establish reasonable~~
14 ~~prequalification criteria and standards, limited in scope to those~~
15 ~~detailed in paragraph (2) of subdivision (c).~~

16 ~~(D) Provide that the subcontracted work shall be awarded to~~
17 ~~the lowest responsible bidder.~~

18 ~~(e) This section shall not be construed and is not intended to~~
19 ~~extend or limit the authority specified in Section 19130.~~

20 ~~(f) Any design-build entity that is selected to design and~~
21 ~~construct a project pursuant to this section shall possess or obtain~~
22 ~~sufficient bonding consistent with applicable provisions of the~~
23 ~~Public Contract Code. Nothing in this section shall prohibit a~~
24 ~~general or engineering contractor from being designated the lead~~
25 ~~entity on a design-build entity for the purposes of purchasing~~
26 ~~necessary bonding to cover the activities of the design-build entity.~~

27 ~~(g) Any payment or performance bond written for the purposes~~
28 ~~of this section shall use a bond form developed by the department.~~
29 ~~In developing the bond form, the department shall consult with~~
30 ~~the surety industry to achieve a bond form that is consistent with~~
31 ~~surety industry standards, while protecting the interests of the state.~~

32 ~~SEC. 3. Section 14661.1 of the Government Code is repealed.~~

33 ~~14661.1. (a) For purposes of this section, the definitions in~~
34 ~~subdivision (a) of Section 13332.19 shall apply. For purposes of~~
35 ~~subdivision (a) of Section 13332.19, references to the Department~~
36 ~~of General Services shall be deemed to be references to the~~
37 ~~Department of General Services or the Department of Corrections~~
38 ~~and Rehabilitation, as applicable.~~

39 ~~(b) Notwithstanding any provision of the Public Contract Code~~
40 ~~or any other provision of law, when the Legislature appropriates~~

1 funds for a specific project, or for any project using funds
2 appropriated pursuant to Chapter 3.2.1 (commencing with Section
3 15819.40) or 3.2.2 (commencing with Section 15819.41) of Part
4 10b, the Director of General Services or the Secretary of the
5 Department of Corrections and Rehabilitation, as appropriate, may
6 contract and procure state office facilities and prison facilities
7 pursuant to this section.

8 (e) ~~Prior to contracting with a design-build entity for the~~
9 ~~procurement of a state office facility or prison facility under this~~
10 ~~section, the Director of General Services or the Secretary of the~~
11 ~~Department of Corrections and Rehabilitation shall:~~

12 (1) ~~Prepare a program setting forth the performance criteria for~~
13 ~~the design-build project. The performance criteria shall be prepared~~
14 ~~by a design professional duly licensed and registered in the State~~
15 ~~of California.~~

16 (2) (A) ~~Establish a competitive prequalification and selection~~
17 ~~process for design-build entities, including any subcontractors~~
18 ~~listed at the time of bid, that clearly specifies the prequalification~~
19 ~~criteria, and states the manner in which the winning design-build~~
20 ~~entity will be selected.~~

21 (B) ~~Prequalification shall be limited to consideration of all of~~
22 ~~the following criteria:~~

23 (i) ~~Possession of all required licenses, registration, and~~
24 ~~credentials in good standing that are required to design and~~
25 ~~construct the project.~~

26 (ii) ~~Submission of evidence that establishes that the design-build~~
27 ~~entity members have completed, or demonstrated the capability~~
28 ~~to complete, projects of similar size, scope, or complexity, and~~
29 ~~that proposed key personnel have sufficient experience and training~~
30 ~~to competently manage and complete the design and construction~~
31 ~~of the project.~~

32 (iii) ~~Submission of a proposed project management plan that~~
33 ~~establishes that the design-build entity has the experience,~~
34 ~~competence, and capacity needed to effectively complete the~~
35 ~~project.~~

36 (iv) ~~Submission of evidence that establishes that the design-build~~
37 ~~entity has the capacity to obtain all required payment and~~
38 ~~performance bonding, liability insurance, and errors and omissions~~
39 ~~insurance, as well as a financial statement that assures the~~
40 ~~Department of General Services or the Department of Corrections~~

1 and Rehabilitation that the design-build entity has the capacity to
2 complete the project.

3 ~~(v) Provision of a declaration certifying that applying members~~
4 ~~of the design-build entity have not had a surety company finish~~
5 ~~work on any project within the last five years.~~

6 ~~(vi) Provision of information and a declaration providing detail~~
7 ~~concerning all of the following:~~

8 ~~(I) Any construction or design claim or litigation totaling more~~
9 ~~than five hundred thousand dollars (\$500,000) or 5 percent of the~~
10 ~~annual value of work performed, whichever is less, settled against~~
11 ~~any member of the design-build entity over the last five years.~~

12 ~~(II) Serious violations of the California Occupational Safety~~
13 ~~and Health Act of 1973, as provided in Part 1 (commencing with~~
14 ~~Section 6300) of Division 5 of the Labor Code, settled against any~~
15 ~~member of the design-build entity.~~

16 ~~(III) Violations of federal or state law, including, but not limited~~
17 ~~to, those laws governing the payment of wages, benefits, or~~
18 ~~personal income tax withholding, of Federal Insurance~~
19 ~~Contributions Act (FICA) withholding requirements, state disability~~
20 ~~insurance withholding, or unemployment insurance payment~~
21 ~~requirements, settled against any member of the design-build entity~~
22 ~~over the last five years. For purposes of this subclause, only~~
23 ~~violations by a design-build member as an employer shall be~~
24 ~~deemed applicable, unless it is shown that the design-build entity~~
25 ~~member, in his or her capacity as an employer, had knowledge of~~
26 ~~his or her subcontractor's violations or failed to comply with the~~
27 ~~conditions set forth in subdivision (b) of Section 1775 of the Labor~~
28 ~~Code.~~

29 ~~(IV) Information required by Section 10162 of the Public~~
30 ~~Contract Code.~~

31 ~~(V) Violations of the Contractors' State License Law (Chapter~~
32 ~~9 (commencing with Section 7000) of Division 3 of the Business~~
33 ~~and Professions Code), excluding alleged violations or complaints.~~

34 ~~(VI) Any conviction of any member of the design-build entity~~
35 ~~of submitting a false or fraudulent claim to a public agency over~~
36 ~~the last five years.~~

37 ~~(vii) Provision of a declaration that the design-build entity will~~
38 ~~comply with all other provisions of law applicable to the project,~~
39 ~~including, but not limited to, the requirements of Chapter 1~~

~~(commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.~~

~~(C) The Director of General Services or the Secretary of the Department of Corrections and Rehabilitation, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive, of subparagraph (B).~~

~~(D) Any declaration required under subparagraph (B) shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.~~

~~(3) (A) Determine, as he or she deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. He or she shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.~~

~~(B) The Director of General Services or the Secretary of the Department of Corrections and Rehabilitation shall make his or her determination by choosing one of the following methods:~~

~~(i) A design-build competition based upon performance, price, and other criteria set forth by the Department of General Services or the Department of Corrections and Rehabilitation in the design-build solicitation package. The Department of General Services or the Department of Corrections and Rehabilitation shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interests of the Department of General Services or the Department of Corrections and Rehabilitation and meeting the objectives of the project. A project with an approved budget of ten million dollars (\$10,000,000) or more may be awarded pursuant to this clause.~~

~~(ii) A design-build competition based upon performance and other criteria set forth by the Department of General Services or~~

1 the Department of Corrections and Rehabilitation in the
2 design-build solicitation package. Criteria used in this evaluation
3 of proposals may include, but need not be limited to, items such
4 as proposed design approach, life-cycle costs, project features, and
5 functions. However, any criteria and methods used to evaluate
6 proposals shall be limited to those contained in the design-build
7 solicitation package. Award shall be made to the design-build
8 entity whose proposal is judged as providing the best value, for
9 the lowest price, meeting the interests of the Department of General
10 Services or the Department of Corrections and Rehabilitation and
11 meeting the objectives of the project. A project with an approved
12 budget of ten million dollars (\$10,000,000) or more may be
13 awarded pursuant to this clause.

14 (iii) A design-build competition based upon program
15 requirements and a detailed scope of work, including any
16 performance criteria and concept drawings set forth by the
17 Department of General Services or the Department of Corrections
18 and Rehabilitation in the design-build solicitation package. Award
19 shall be made on the basis of the lowest responsible bid. A project
20 with an approved budget of two hundred fifty thousand dollars
21 (\$250,000) or more may be awarded pursuant to this clause.

22 (4) For purposes of this subdivision, the following definitions
23 shall apply:

24 (A) "Best interest of the state" means a design-build process
25 that is projected by the Director of General Services or the
26 Secretary of the Department of Corrections and Rehabilitation to
27 reduce the project delivery schedule and total cost of a project
28 while maintaining a high level of quality workmanship and
29 materials, when compared to the traditional design-bid-build
30 process.

31 (B) "Best value" means a value determined by objective criteria
32 that may include, but are not limited to, price, features, functions,
33 life-cycle costs, experience, and other criteria deemed appropriate
34 by the Department of General Services or the Department of
35 Corrections and Rehabilitation.

36 (d) The Legislature recognizes that the design-build entity is
37 charged with performing both design and construction. Because
38 a design-build contract may be awarded prior to the completion
39 of the design, it is often impracticable for the design-build entity
40 to list all subcontractors at the time of the award. As a result, the

~~1 subcontractor listing requirements contained in Chapter 4
2 (commencing with Section 4100) of Part 1 of Division 2 of the
3 Public Contract Code can create a conflict with the implementation
4 of the design-build process by requiring all subcontractors to be
5 listed at a time when a sufficient set of plans shall not be available.
6 It is the intent of the Legislature to establish a clear process for
7 the selection and award of subcontracts entered into pursuant to
8 this section in a manner that retains protection for subcontractors
9 while enabling design-build projects to be administered in an
10 efficient fashion. Therefore, all of the following requirements shall
11 apply to subcontractors, licensed pursuant to Chapter 9
12 (commencing with Section 7000) of Division 3 of the Business
13 and Professions Code, that are employed on design-build projects
14 undertaken pursuant to this section:~~

~~(1) The Department of General Services and the Department of
16 Corrections and Rehabilitation, in each design-build solicitation
17 package, may identify types of subcontractors, by subcontractor
18 license classification, that will be listed by the design-build entity
19 at the time of the bid. In selecting the subcontractors that will be
20 listed by the design-build entity, the Department of General
21 Services and the Department of Corrections and Rehabilitation
22 shall limit the identification to only those license classifications
23 deemed essential for proper completion of the project. In no event,
24 however, may the Department of General Services or the
25 Department of Corrections and Rehabilitation specify more than
26 five licensed subcontractor classifications. In addition, at its
27 discretion, the design-build entity may list an additional two
28 subcontractors, identified by subcontractor license classification,
29 that will perform design or construction work, or both, on the
30 project. In no event shall the design-build entity list at the time of
31 bid a total number of subcontractors that will perform design or
32 construction work, or both, in a total of more than seven
33 subcontractor license classifications on a project. All subcontractors
34 that are listed at the time of bid shall be afforded all of the
35 protection contained in Chapter 4 (commencing with Section 4100)
36 of Part 1 of Division 2 of the Public Contract Code. All
37 subcontracts that were not listed by the design-build entity at the
38 time of bid shall be awarded in accordance with paragraph (2).~~

~~(2) All subcontracts that were not to be performed by the
40 design-build entity in accordance with paragraph (1) shall be~~

1 competitively bid and awarded by the design-build entity, in
2 accordance with the design-build process set forth by the
3 Department of General Services or the Department of Corrections
4 and Rehabilitation in the design-build solicitation package. The
5 design-build entity shall do all of the following:

6 (A) Provide public notice of the availability of work to be
7 subcontracted in accordance with Section 10140 of the Public
8 Contract Code.

9 (B) Provide a fixed date and time on which the subcontracted
10 work will be awarded in accordance with Section 10141 of the
11 Public Contract Code.

12 (C) As authorized by the Department of General Services or
13 the Department of Corrections and Rehabilitation, establish
14 reasonable prequalification criteria and standards, limited in scope
15 to those detailed in paragraph (2) of subdivision (c).

16 (D) Provide that the subcontracted work shall be awarded to
17 the lowest responsible bidder.

18 (e) This section shall not be construed and is not intended to
19 extend or limit the authority specified in Section 19130.

20 (f) Any design-build entity that is selected to design and
21 construct a project pursuant to this section shall possess or obtain
22 sufficient bonding consistent with applicable provisions of the
23 Public Contract Code. Nothing in this section shall prohibit a
24 general or engineering contractor from being designated the lead
25 entity on a design-build entity for the purposes of purchasing
26 necessary bonding to cover the activities of the design-build entity.

27 (g) Any payment or performance bond written for the purposes
28 of this section shall use a bond form developed by the Department
29 of General Services or the Department of Corrections and
30 Rehabilitation. In developing the bond form, the Department of
31 General Services or the Department of Corrections and
32 Rehabilitation shall consult with the surety industry to achieve a
33 bond form that is consistent with surety industry standards, while
34 protecting the interests of the state.

35 (h) The Department of General Services or the Department of
36 Corrections and Rehabilitation, as appropriate, shall each submit
37 to the Joint Legislative Budget Committee, before January 1, 2014,
38 a report containing a description of each public works project
39 procured by that department through the design-build process
40 described in this section that is completed after January 1, 2009,

1 and before December 1, 2013. The report shall include, but shall
2 not be limited to, all of the following information:

- 3 (1) The type of project.
- 4 (2) The gross square footage of the project.
- 5 (3) The design-build entity that was awarded the project.
- 6 (4) The estimated and actual project costs.
- 7 (5) An assessment of the prequalification process and criteria.
- 8 (6) An assessment of the effect of any retention on the project
9 made under the law.

10 (7) A description of the method used to award the contract. If
11 the best value method was used, the report shall describe the factors
12 used to evaluate the bid, including the weighting of each factor
13 and an assessment of the effectiveness of the methodology.

14 (i) The authority provided under this section shall be in addition
15 to the authority provided to the Department of General Services
16 pursuant to Section 4 of Chapter 252 of the Statutes of 1998, as
17 amended by Section 3 of Chapter 154 of the Statutes of 2007. The
18 authority under this section and Section 70391.7 shall apply to a
19 total of not more than five state office facilities, prison facilities,
20 or court facilities, which shall be determined pursuant to this
21 subdivision.

22 (1) In order to enter into a contract utilizing the procurement
23 method authorized under this section, the Director of General
24 Services or the Secretary of the Department of Corrections and
25 Rehabilitation shall submit a request to the Department of Finance.

26 (2) The Department of Finance shall make a determination
27 whether to approve or deny a request made pursuant to paragraph
28 (1) if the design-build project requested will not exceed the five
29 facilities maximum set forth in this section and Section 70391.7.

30 (3) After receiving notification that the Department of Finance
31 has approved the request and that the Legislature has appropriated
32 funds for a specific project, the director or secretary may enter into
33 a design-build contract under this section.

34 (j) Nothing in this section is intended to affect, expand, alter,
35 or limit any rights or remedies otherwise available under the law.

36 SEC. 4. Section 32132.5 of the Health and Safety Code is
37 amended to read:

38 32132.5. (a) Notwithstanding Section 32132 or any other
39 provision of law, upon approval by the board of directors of the
40 Sonoma Valley Health Care District, the design-build procedure

described in ~~Section 20133~~ Article 6 (commencing with Section 10186) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code may be used to assign contracts for the construction of a building or improvements directly related to construction of a hospital or health facility building at the Sonoma Valley Hospital.

(b) For purposes of this section, all references in ~~Section 20133~~ Article 6 (commencing with Section 10186) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code to “county” and “~~board of supervisors~~” “governing body” shall mean the Sonoma Valley Health Care District and its board of directors.

(c) A hospital building project utilizing the design-build process authorized by subdivision (a) shall be reviewed and inspected in accordance with the standards and requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Chapter 1 (commencing with Section 129675) of Part 7 of Division 107).

SEC. 5. Article 6 (commencing with Section 10186) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 6. State Agency Design-Build Projects

10186. (a) The Legislature finds and declares that the design-build method of project delivery, using a best value procurement methodology, has been authorized for various agencies that have reported benefits from such projects including reduced project costs, expedited project completion, and design features that are not achievable through the traditional design-bid-build method.

(b) It is the intent of the Legislature that the following occur:

(1) This article provides general authorization for certain state agencies to use design-build for projects, excluding projects on the state highway system.

(2) This article shall not be deemed to provide a preference for the design-build method over other procurement methodologies.

10187. For purposes of this article, the following definitions apply:

(a) “Best value” means a value determined by evaluation of proposals with reference to specified criteria objectively applied, including, but not limited to, price, quality of technical proposals, qualifications of key personnel, and other criteria deemed

1 appropriate by the director. A best value determination may entail
2 selection of the lowest priced technically acceptable proposals or
3 selection of the best proposal for a fixed price established by the
4 procuring agency, or it may consist of a tradeoff between price
5 and other specified factors.

6 (b) “Construction subcontract” means each subcontract awarded
7 by the design-build entity to a subcontractor that will perform work
8 or labor or render service to the design-build entity in or about the
9 construction of the work or improvement, or a subcontractor
10 licensed by the State of California that, under subcontract to the
11 design-build entity, specially fabricates and installs a portion of
12 the work or improvement according to detailed drawings contained
13 in the plans and specifications produced by the design-build team.

14 (c) “Department” means the Department of General Services
15 and the Department of Corrections and Rehabilitation.

16 (d) “Design-build” means a project delivery process in which
17 both the design and construction of a project are procured from a
18 single entity.

19 (e) “Design-build entity” means a corporation, limited liability
20 company, partnership, joint venture, or other legal entity that is
21 able to provide appropriately licensed contracting, architectural,
22 and engineering services as needed pursuant to a design-build
23 contract.

24 (f) “Design-build team” means the design-build entity itself and
25 the individuals and other entities identified by the design-build
26 entity as members of its team.

27 (g) “Director” means, with respect to procurements undertaken
28 by the Department of General Services, the Director of General
29 Services or, with respect to procurements undertaken by the
30 Department of Corrections and Rehabilitation, the secretary of that
31 department.

32 10188. (a) Notwithstanding any other law, the director,
33 following notification to the State Public Works Board, may
34 procure design-build contracts for public works projects in excess
35 of one million dollars (\$1,000,000), awarding the contract using
36 either the low bid or best value, provided that this article shall not
37 apply to any projects on the state highway system.

38 (b) The director shall develop guidelines for a standard
39 organizational conflict-of-interest policy, consistent with applicable
40 law, regarding the ability of a person or entity, that performs

1 services for the department relating to the solicitation of a
2 design-build project, to submit a proposal as a design-build entity,
3 or to join a design-build team. This conflict-of-interest policy shall
4 apply to each department entering into design-build contracts
5 authorized under this article.

6 10189. (a) For contracts for public works projects awarded on
7 or after the effective date of the regulations adopted by the
8 Department of Industrial Relations pursuant to subdivision (g) of
9 Section 1771.5 of the Labor Code, the department shall reimburse
10 the Department of Industrial Relations for its reasonable and
11 directly related costs of performing prevailing wage monitoring
12 and enforcement on public works projects pursuant to rates
13 established by the department as set forth in subdivision (h) of
14 Section 1771.5 of the Labor Code. All moneys collected pursuant
15 to this subdivision shall be deposited in the State Public Works
16 Enforcement Fund, created by Section 1771.3 of the Labor Code,
17 and shall, subject to appropriation by the Legislature, be used only
18 for enforcement of prevailing wage requirements on those projects.

19 (b) In lieu of reimbursing the Department of Industrial Relations
20 for its reasonable and directly related costs of performing
21 monitoring and enforcement on public works projects, the
22 department may elect to continue operating an existing previously
23 approved labor compliance program to monitor and enforce
24 prevailing wage requirements on the project if it has either not
25 contracted with a third party to conduct its labor compliance
26 program and requests and receives approval from the department
27 to continue its existing program or it enters into a collective
28 bargaining agreement that binds all of the contractors performing
29 work on the project and that includes a mechanism for resolving
30 disputes about the payment of wages.

31 10190. The director shall notify the State Public Works Board
32 regarding the method to be used for selecting the design-build
33 entity, prior to advertising the design-build project.

34 10191. The procurement process for the design-build projects
35 shall progress as follows:

36 (a) The director shall prepare a set of documents setting forth
37 the scope and estimated price of the project. The documents may
38 include, but need not be limited to, the size, type, and desired
39 design character of the project, performance specifications covering
40 the quality of materials, equipment, workmanship, preliminary

1 plans or building layouts, or any other information deemed
2 necessary to describe adequately the department's needs. The
3 performance specifications and any plans shall be prepared by a
4 design professional who is duly licensed and registered in
5 California.

6 (b) Based on the documents prepared under subdivision (a), the
7 director shall prepare and issue a request for qualifications in order
8 to prequalify or short-list the design-build entities whose proposals
9 shall be evaluated for final selection. The request for qualifications
10 shall include, but need not be limited to, the following elements:

11 (1) Identification of the basic scope and needs of the project or
12 contract, the expected cost range, the methodology that will be
13 used by the department to evaluate proposals, the procedure for
14 final selection of the design-build entity, and any other information
15 deemed necessary by the director to inform interested parties of
16 the contracting opportunity.

17 (2) (A) Significant factors that the department reasonably
18 expects to consider in evaluating qualifications, including technical
19 design and construction expertise, skilled labor force availability,
20 and all other nonprice-related factors.

21 (B) For purposes of subparagraph (A), skilled labor force
22 availability shall be deemed satisfied by the existence of an
23 agreement with a registered apprenticeship program, approved by
24 the California Apprenticeship Council, that has graduated at least
25 one apprentice in each of the preceding five years. This graduation
26 requirement shall not apply to programs providing apprenticeship
27 training for any craft that was first deemed by the federal
28 Department of Labor and the Department of Industrial Relations
29 to be an apprenticeable craft within the five years prior to the
30 effective date of this article.

31 (3) A standard template request for statements of qualifications
32 prepared by the department. In preparing the standard template,
33 the department may consult with the construction industry, the
34 building trades and surety industry, and other agencies interested
35 in using the authorization provided by this article. The template
36 shall require the following information:

37 (A) If the design-build entity is a privately held corporation,
38 limited liability company, partnership, or joint venture, a listing
39 of all of the shareholders, partners, or members known at the time

1 of statement of qualification submission who will perform work
2 on the project.

3 (B) Evidence that the members of the design-build team have
4 completed, or demonstrated the experience, competency, capability,
5 and capacity to complete projects of similar size, scope, or
6 complexity, and that proposed key personnel have sufficient
7 experience and training to competently manage and complete the
8 design and construction of the project, and a financial statement
9 that ensures that the design-build entity has the capacity to
10 complete the project.

11 (C) The licenses, registration, and credentials required to design
12 and construct the project, including, but not limited to, information
13 on the revocation or suspension of any license, credential, or
14 registration.

15 (D) Evidence that establishes that the design-build entity has
16 the capacity to obtain all required payment and performance
17 bonding, liability insurance, and errors and omissions insurance.

18 (E) Information concerning workers' compensation experience
19 history and a worker safety program.

20 (F) If the proposed design-build entity is a corporation, limited
21 liability company, partnership, joint venture, or other legal entity,
22 a copy of the organizational documents or agreement committing
23 to form the organization.

24 (G) An acceptable safety record. A proposer's safety record
25 shall be deemed acceptable if its experience modification rate for
26 the most recent three-year period is an average of 1.00 or less, and
27 its average total recordable injury or illness rate and average lost
28 work rate for the most recent three-year period does not exceed
29 the applicable statistical standards for its business category or if
30 the proposer is a party to an alternative dispute resolution system
31 as provided for in Section 3201.5 of the Labor Code.

32 (4) (A) The information required under this subdivision shall
33 be certified under penalty of perjury by the design-build entity and
34 its general partners or joint venture members.

35 (B) Information required under this subdivision that is not
36 otherwise a public record under the California Public Records Act
37 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
38 Title 1 of the Government Code) shall not be open to public
39 inspection.

(c) Based on the documents prepared as described in subdivision (a), the director shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the department. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the department to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the department to inform interested parties of the contracting opportunity.

(2) Significant factors that the department reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the department may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the department shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the department to ensure that any discussions or negotiations are conducted in good faith.

(d) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(e) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals.

(2) Pursuant to subdivision (c), the department may hold discussions or negotiations with responsive proposers using the process articulated in the department's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided,

1 provided that no more than three proposers are required to be
2 ranked.

3 (4) The award of the contract shall be made to the responsible
4 design-build entity whose proposal is determined by the director
5 to have offered the best value to the public.

6 (5) Notwithstanding any other provision of this code, upon
7 issuance of a contract award, the director shall publicly announce
8 its award, identifying the design-build entity to which the award
9 is made, along with a written decision supporting its contract award
10 and stating the basis of the award.

11 (6) The written decision supporting the director's contract award,
12 described in paragraph (5), and the contract file shall provide
13 sufficient information to satisfy an external audit.

14 10192. (a) The design-build entity shall provide payment and
15 performance bonds for the project in the form and in the amount
16 required by the director, and issued by a California admitted surety.
17 The amount of the payment bond shall not be less than the amount
18 of the performance bond.

19 (b) The design-build contract shall require errors and omissions
20 insurance coverage for the design elements of the project.

21 (c) The department shall develop a standard form of payment
22 and performance bond for its design-build projects.

23 10193. (a) The department, in each design-build request for
24 proposals, may identify specific types of subcontractors that must
25 be included in the design-build entity statement of qualifications
26 and proposal. All construction subcontractors that are identified
27 in the proposal shall be afforded all the protections of Chapter 4
28 (commencing with Section 4100) of Part 1.

29 (b) Following award of the design-build contract, the
30 design-build entity shall proceed as follows in awarding
31 construction subcontracts with a value exceeding one-half of 1
32 percent of the contract price allocable to construction work:

33 (1) Provide public notice of availability of work to be
34 subcontracted in accordance with the publication requirements
35 applicable to the competitive bidding process of the department,
36 including a fixed date and time on which qualifications statements,
37 bids, or proposals will be due.

38 (2) Establish reasonable qualification criteria and standards.

39 (3) Award the subcontract either on a best value basis or to the
40 lowest responsible bidder. The process may include prequalification

1 or short-listing. The foregoing process does not apply to
2 construction subcontractors listed in the original proposal.
3 Subcontractors awarded construction subcontracts under this
4 subdivision shall be afforded all the protections of Chapter 4
5 (commencing with Section 4100) of Part 1.

6 10194. (a) If the department elects to award a project pursuant
7 to this article, retention proceeds withheld by the department from
8 the design-build entity shall not exceed 5 percent, except as
9 otherwise specified in this section.

10 (b) (1) In a contract between the design-build entity and the
11 subcontractor, and in a contract between a subcontractor and any
12 subcontractor thereunder, the percentage of the retention proceeds
13 withheld may not exceed the percentage specified in the contract
14 between the department and the design-build entity.

15 (2) This subdivision shall not apply if the design-build entity
16 provides written notice to any subcontractor that is not a member
17 of the design-build entity, prior to, or at the time the bid is
18 requested from the subcontractor, that a bond may be required and
19 the subcontractor subsequently is unable or refuses to furnish a
20 bond to the design-build entity, then the design-build entity may
21 withhold retention proceeds in excess of the percentage specified
22 in the contract between the department and the design-build entity
23 from any payment made by the design-build entity to the
24 subcontractor.

25 (3) Notwithstanding any other provision of this section, the
26 retention proceeds withheld from any payment by a department
27 from the original design-build entity, by the original design-build
28 entity contractor from any subcontractor, and by a subcontractor
29 from any subcontractor thereunder, may exceed 5 percent on
30 specific projects where the director has made a finding prior to the
31 proposal due date that the project is substantially complex and
32 therefore requires a higher retention amount than 5 percent, and
33 the department includes both this finding and the actual retention
34 amount in the procurement documents.

35 10194. Nothing in this article affects, expands, alters, or limits
36 any rights or remedies otherwise available at law.

37 SEC. 6. Section 20133 of the Public Contract Code is repealed.

38 ~~20133. (a) A county, with approval of the board of~~
39 ~~supervisors, may utilize an alternative procedure for bidding on~~
40 ~~construction projects in the county in excess of two million five~~

1 hundred thousand dollars (\$2,500,000) and may award the project
2 using either the lowest responsible bidder or by best value.

3 ~~(b) (1) It is the intent of the Legislature to enable counties to~~
4 ~~utilize design-build for buildings and county sanitation wastewater~~
5 ~~treatment facilities. It is not the intent of the Legislature to~~
6 ~~authorize this procedure for other infrastructure, including, but not~~
7 ~~limited to, streets and highways, public rail transit, or water~~
8 ~~resources facilities and infrastructures.~~

9 ~~(2) The Legislature also finds and declares that utilizing a~~
10 ~~design-build contract requires a clear understanding of the roles~~
11 ~~and responsibilities of each participant in the design-build process.~~

12 ~~(3) (A) For contracts for public works projects awarded prior~~
13 ~~to the effective date of regulations adopted by the Department of~~
14 ~~Industrial Relations pursuant to subdivision (g) of Section 1771.5~~
15 ~~of the Labor Code, if the board of supervisors elects to proceed~~
16 ~~under this section, the board of supervisors shall establish and~~
17 ~~enforce a labor compliance program containing the requirements~~
18 ~~outlined in Section 1771.5 of the Labor Code, or it shall contract~~
19 ~~with a third party to operate a labor compliance program containing~~
20 ~~the requirements outlined in Section 1771.5 of the Labor Code.~~
21 ~~This requirement shall not apply to any projects where the county~~
22 ~~or the design-build entity has entered into a collective bargaining~~
23 ~~agreement that binds all of the contractors performing work on the~~
24 ~~projects.~~

25 ~~(B) For contracts for public works projects awarded on or after~~
26 ~~the effective date of regulations adopted by the Department of~~
27 ~~Industrial Relations pursuant to subdivision (g) of Section 1771.5~~
28 ~~of the Labor Code, the board of supervisors shall reimburse the~~
29 ~~department for its reasonable and directly related costs of~~
30 ~~performing prevailing wage monitoring and enforcement on public~~
31 ~~works projects pursuant to rates established by the department as~~
32 ~~set forth in subdivision (h) of Section 1771.5 of the Labor Code.~~
33 ~~All moneys collected pursuant to this paragraph shall be deposited~~
34 ~~in the State Public Works Enforcement Fund created by Section~~
35 ~~1771.3 of the Labor Code, and shall be used only for enforcement~~
36 ~~of prevailing wage requirements on those projects.~~

37 ~~(C) In lieu of reimbursing the Department of Industrial Relations~~
38 ~~for its reasonable and directly related costs of performing~~
39 ~~monitoring and enforcement on public works projects, the board~~
40 ~~of supervisors may elect to continue operating an existing~~

1 previously approved labor compliance program to monitor and
2 enforce prevailing wage requirements on the project if it has either
3 not contracted with a third party to conduct its labor compliance
4 program and requests and receives approval from the department
5 to continue its existing program or it enters into a collective
6 bargaining agreement that binds all of the contractors performing
7 work on the project and that includes a mechanism for resolving
8 disputes about the payment of wages.

9 (e) As used in this section:

10 (1) “Best value” means a value determined by objective criteria
11 related to price, features, functions, and life-cycle costs.

12 (2) “Design-build” means a procurement process in which both
13 the design and construction of a project are procured from a single
14 entity.

15 (3) “Design-build entity” means a partnership, corporation, or
16 other legal entity that is able to provide appropriately licensed
17 contracting, architectural, and engineering services as needed
18 pursuant to a design-build contract.

19 (4) “Project” means the construction of a building and
20 improvements directly related to the construction of a building,
21 and county sanitation wastewater treatment facilities, but does not
22 include the construction of other infrastructure, including, but not
23 limited to, streets and highways, public rail transit, or water
24 resources facilities and infrastructure.

25 (d) Design-build projects shall progress in a four-step process,
26 as follows:

27 (1) (A) The county shall prepare a set of documents setting
28 forth the scope of the project. The documents may include, but are
29 not limited to, the size, type, and desired design character of the
30 public improvement, performance specifications covering the
31 quality of materials, equipment, and workmanship, preliminary
32 plans or building layouts, or any other information deemed
33 necessary to describe adequately the county’s needs. The
34 performance specifications and any plans shall be prepared by a
35 design professional who is duly licensed and registered in
36 California.

37 (B) Any architect or engineer retained by the county to assist
38 in the development of the project specific documents shall not be
39 eligible to participate in the preparation of a bid with any
40 design-build entity for that project.

1 ~~(2) (A) Based on the documents prepared in paragraph (1), the~~
2 ~~county shall prepare a request for proposals that invites interested~~
3 ~~parties to submit competitive sealed proposals in the manner~~
4 ~~prescribed by the county. The request for proposals shall include,~~
5 ~~but is not limited to, the following elements:~~

6 ~~(i) Identification of the basic scope and needs of the project or~~
7 ~~contract, the expected cost range, and other information deemed~~
8 ~~necessary by the county to inform interested parties of the~~
9 ~~contracting opportunity, to include the methodology that will be~~
10 ~~used by the county to evaluate proposals and specifically if the~~
11 ~~contract will be awarded to the lowest responsible bidder.~~

12 ~~(ii) Significant objective factors that the county reasonably~~
13 ~~expects to consider in evaluating proposals, including cost or price~~
14 ~~and all nonprice related factors.~~

15 ~~(iii) The relative importance of weight assigned to each of the~~
16 ~~factors identified in the request for proposals.~~

17 ~~(B) With respect to clause (iii) of subparagraph (A), if a~~
18 ~~nonweighted system is used, the agency shall specifically disclose~~
19 ~~whether all evaluation factors other than cost or price when~~
20 ~~combined are:~~

21 ~~(i) Significantly more important than cost or price.~~

22 ~~(ii) Approximately equal in importance to cost or price.~~

23 ~~(iii) Significantly less important than cost or price.~~

24 ~~(C) If the county chooses to reserve the right to hold discussions~~
25 ~~or negotiations with responsive bidders, it shall so specify in the~~
26 ~~request for proposal and shall publish separately or incorporate~~
27 ~~into the request for proposal applicable rules and procedures to be~~
28 ~~observed by the county to ensure that any discussions or~~
29 ~~negotiations are conducted in good faith.~~

30 ~~(3) (A) The county shall establish a procedure to prequalify~~
31 ~~design-build entities using a standard questionnaire developed by~~
32 ~~the county. In preparing the questionnaire, the county shall consult~~
33 ~~with the construction industry, including representatives of the~~
34 ~~building trades and surety industry. This questionnaire shall require~~
35 ~~information including, but not limited to, all of the following:~~

36 ~~(i) If the design-build entity is a partnership, limited partnership,~~
37 ~~or other association, a listing of all of the partners, general partners,~~
38 ~~or association members known at the time of bid submission who~~
39 ~~will participate in the design-build contract, including, but not~~
40 ~~limited to, mechanical subcontractors.~~

1 (ii) ~~Evidence that the members of the design-build entity have~~
2 ~~completed, or demonstrated the experience, competency, capability,~~
3 ~~and capacity to complete, projects of similar size, scope, or~~
4 ~~complexity, and that proposed key personnel have sufficient~~
5 ~~experience and training to competently manage and complete the~~
6 ~~design and construction of the project, as well as a financial~~
7 ~~statement that assures the county that the design-build entity has~~
8 ~~the capacity to complete the project.~~

9 (iii) ~~The licenses, registration, and credentials required to design~~
10 ~~and construct the project, including information on the revocation~~
11 ~~or suspension of any license, credential, or registration.~~

12 (iv) ~~Evidence that establishes that the design-build entity has~~
13 ~~the capacity to obtain all required payment and performance~~
14 ~~bonding, liability insurance, and errors and omissions insurance.~~

15 (v) ~~Any prior serious or willful violation of the California~~
16 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
17 ~~(commencing with Section 6300) of Division 5 of the Labor Code,~~
18 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
19 ~~Law 91-596), settled against any member of the design-build entity,~~
20 ~~and information concerning workers' compensation experience~~
21 ~~history and worker safety program.~~

22 (vi) ~~Information concerning any debarment, disqualification,~~
23 ~~or removal from a federal, state, or local government public works~~
24 ~~project. Any instance in which an entity, its owners, officers, or~~
25 ~~managing employees submitted a bid on a public works project~~
26 ~~and were found to be nonresponsive, or were found by an awarding~~
27 ~~body not to be a responsible bidder.~~

28 (vii) ~~Any instance in which the entity, or its owners, officers,~~
29 ~~or managing employees, defaulted on a construction contract.~~

30 (viii) ~~Any violations of the Contractors' State License Law~~
31 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~
32 ~~Business and Professions Code), excluding alleged violations of~~
33 ~~federal or state law including the payment of wages, benefits,~~
34 ~~apprenticeship requirements, or personal income tax withholding,~~
35 ~~or of Federal Insurance Contributions Act (FICA; 26 U.S.C. Sec.~~
36 ~~3101 et seq.) withholding requirements settled against any member~~
37 ~~of the design-build entity.~~

38 (ix) ~~Information concerning the bankruptcy or receivership of~~
39 ~~any member of the design-build entity, including information~~
40 ~~concerning any work completed by a surety.~~

1 ~~(x) Information concerning all settled adverse claims, disputes,~~
2 ~~or lawsuits between the owner of a public works project and any~~
3 ~~member of the design-build entity during the five years preceding~~
4 ~~submission of a bid pursuant to this section, in which the claim,~~
5 ~~settlement, or judgment exceeds fifty thousand dollars (\$50,000).~~
6 ~~Information shall also be provided concerning any work completed~~
7 ~~by a surety during this period.~~

8 ~~(xi) In the case of a partnership or an association that is not a~~
9 ~~legal entity, a copy of the agreement creating the partnership or~~
10 ~~association and specifying that all partners or association members~~
11 ~~agree to be fully liable for the performance under the design-build~~
12 ~~contract.~~

13 ~~(xii) (I) Any instance in which the entity, or any of its members,~~
14 ~~owners, officers, or managing employees was, during the five years~~
15 ~~preceding submission of a bid pursuant to this section, determined~~
16 ~~by a court of competent jurisdiction to have submitted, or legally~~
17 ~~admitted for purposes of a criminal plea to have submitted either~~
18 ~~of the following:~~

19 ~~(ia) Any claim to any public agency or official in violation of~~
20 ~~the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.).~~

21 ~~(ib) Any claim to any public official in violation of the~~
22 ~~California False Claims Act (Article 9 (commencing with Section~~
23 ~~12650) of Chapter 6 of Part 2 of Division 3 of the Government~~
24 ~~Code).~~

25 ~~(H) Information provided pursuant to this subdivision shall~~
26 ~~include the name and number of any case filed, the court in which~~
27 ~~it was filed, and the date on which it was filed. The entity may~~
28 ~~also provide further information regarding any such instance,~~
29 ~~including any mitigating or extenuating circumstances that the~~
30 ~~entity wishes the county to consider.~~

31 ~~(B) The information required pursuant to this subdivision shall~~
32 ~~be verified under oath by the entity and its members in the manner~~
33 ~~in which civil pleadings in civil actions are verified. Information~~
34 ~~that is not a public record pursuant to the California Public Records~~
35 ~~Act (Chapter 3.5 (commencing with Section 6250) of Division 7~~
36 ~~of Title 1 of the Government Code) shall not be open to public~~
37 ~~inspection.~~

38 ~~(4) The county shall establish a procedure for final selection of~~
39 ~~the design-build entity. Selection shall be based on either of the~~
40 ~~following criteria:~~

1 ~~(A) A competitive bidding process resulting in lump-sum bids~~
2 ~~by the prequalified design-build entities. Awards shall be made to~~
3 ~~the lowest responsible bidder.~~

4 ~~(B) A county may use a design-build competition based upon~~
5 ~~best value and other criteria set forth in paragraph (2). The~~
6 ~~design-build competition shall include the following elements:~~

7 ~~(i) Competitive proposals shall be evaluated by using only the~~
8 ~~criteria and selection procedures specifically identified in the~~
9 ~~request for proposal. However, the following minimum factors~~
10 ~~shall each represent at least 10 percent of the total weight of~~
11 ~~consideration given to all criteria factors: price, technical design,~~
12 ~~and construction expertise, life cycle costs over 15 years or more,~~
13 ~~skilled labor force availability, and acceptable safety record.~~

14 ~~(ii) Once the evaluation is complete, the top three responsive~~
15 ~~bidders shall be ranked sequentially from the most advantageous~~
16 ~~to the least.~~

17 ~~(iii) The award of the contract shall be made to the responsible~~
18 ~~bidder whose proposal is determined, in writing, to be the most~~
19 ~~advantageous.~~

20 ~~(iv) Notwithstanding any provision of this code, upon issuance~~
21 ~~of a contract award, the county shall publicly announce its award,~~
22 ~~identifying the contractor to whom the award is made, along with~~
23 ~~a written decision supporting its contract award and stating the~~
24 ~~basis of the award. The notice of award shall also include the~~
25 ~~county's second and third ranked design-build entities.~~

26 ~~(v) For purposes of this paragraph, "skilled labor force~~
27 ~~availability" shall be determined by the existence of an agreement~~
28 ~~with a registered apprenticeship program, approved by the~~
29 ~~California Apprenticeship Council, which has graduated~~
30 ~~apprentices in each of the preceding five years. This graduation~~
31 ~~requirement shall not apply to programs providing apprenticeship~~
32 ~~training for any craft that has been deemed by the Department of~~
33 ~~Labor and the Department of Industrial Relations to be an~~
34 ~~apprenticeable craft in the five years prior to enactment of this act.~~

35 ~~(vi) For purposes of this paragraph, a bidder's "safety record"~~
36 ~~shall be deemed "acceptable" if its experience modification rate~~
37 ~~for the most recent three-year period is an average of 1.00 or less,~~
38 ~~and its average total recordable injury/illness rate and average lost~~
39 ~~work rate for the most recent three-year period does not exceed~~
40 ~~the applicable statistical standards for its business category or if~~

1 the bidder is a party to an alternative dispute resolution system as
2 provided for in Section 3201.5 of the Labor Code.

3 ~~(e) (1) Any design-build entity that is selected to design and~~
4 ~~build a project pursuant to this section shall possess or obtain~~
5 ~~sufficient bonding to cover the contract amount for nondesign~~
6 ~~services, and errors and omission insurance coverage sufficient to~~
7 ~~cover all design and architectural services provided in the contract.~~
8 ~~This section does not prohibit a general or engineering contractor~~
9 ~~from being designated the lead entity on a design-build entity for~~
10 ~~the purposes of purchasing necessary bonding to cover the activities~~
11 ~~of the design-build entity.~~

12 ~~(2) Any payment or performance bond written for the purposes~~
13 ~~of this section shall be written using a bond form developed by~~
14 ~~the county.~~

15 ~~(f) All subcontractors that were not listed by the design-build~~
16 ~~entity in accordance with clause (i) of subparagraph (A) of~~
17 ~~paragraph (3) of subdivision (d) shall be awarded by the~~
18 ~~design-build entity in accordance with the design-build process~~
19 ~~set forth by the county in the design-build package. All~~
20 ~~subcontractors bidding on contracts pursuant to this section shall~~
21 ~~be afforded the protections contained in Chapter 4 (commencing~~
22 ~~with Section 4100) of Part 1. The design-build entity shall do both~~
23 ~~of the following:~~

24 ~~(1) Provide public notice of the availability of work to be~~
25 ~~subcontracted in accordance with the publication requirements~~
26 ~~applicable to the competitive bidding process of the county.~~

27 ~~(2) Provide a fixed date and time on which the subcontracted~~
28 ~~work will be awarded in accordance with the procedure established~~
29 ~~pursuant to this section.~~

30 ~~(g) Lists of subcontractors, bidders, and bid awards relating to~~
31 ~~the project shall be submitted by the design-build entity to the~~
32 ~~awarding body within 14 days of the award. These documents are~~
33 ~~deemed to be public records and shall be available for public~~
34 ~~inspection pursuant to this chapter and Article 1 (commencing~~
35 ~~with Section 6250) of Chapter 3.5 of Division 7 of the Government~~
36 ~~Code.~~

37 ~~(h) The minimum performance criteria and design standards~~
38 ~~established pursuant to paragraph (1) of subdivision (d) shall be~~
39 ~~adhered to by the design-build entity. Any deviations from those~~
40 ~~standards may only be allowed by written consent of the county.~~

1 ~~(i) The county may retain the services of a design professional~~
2 ~~or construction project manager, or both, throughout the course of~~
3 ~~the project in order to ensure compliance with this section.~~

4 ~~(j) Contracts awarded pursuant to this section shall be valid until~~
5 ~~the project is completed.~~

6 ~~(k) Nothing in this section is intended to affect, expand, alter,~~
7 ~~or limit any rights or remedies otherwise available at law.~~

8 ~~(l) (1) If the county elects to award a project pursuant to this~~
9 ~~section, retention proceeds withheld by the county from the~~
10 ~~design-build entity shall not exceed 5 percent if a performance and~~
11 ~~payment bond, issued by an admitted surety insurer, is required in~~
12 ~~the solicitation of bids.~~

13 ~~(2) In a contract between the design-build entity and the~~
14 ~~subcontractor, and in a contract between a subcontractor and any~~
15 ~~subcontractor thereunder, the percentage of the retention proceeds~~
16 ~~withheld may not exceed the percentage specified in the contract~~
17 ~~between the county and the design-build entity. If the design-build~~
18 ~~entity provides written notice to any subcontractor who is not a~~
19 ~~member of the design-build entity, prior to or at the time the bid~~
20 ~~is requested, that a bond may be required and the subcontractor~~
21 ~~subsequently is unable or refuses to furnish a bond to the~~
22 ~~design-build entity, then the design-build entity may withhold~~
23 ~~retention proceeds in excess of the percentage specified in the~~
24 ~~contract between the county and the design-build entity from any~~
25 ~~payment made by the design-build entity to the subcontractor.~~

26 ~~(m) Each county that elects to proceed under this section and~~
27 ~~uses the design-build method on a public works project shall submit~~
28 ~~to the Legislative Analyst's Office before September 1, 2013, a~~
29 ~~report containing a description of each public works project~~
30 ~~procured through the design-build process and completed after~~
31 ~~November 1, 2009, and before August 1, 2013. The report shall~~
32 ~~include, but shall not be limited to, all of the following information:~~

33 ~~(1) The type of project.~~

34 ~~(2) The gross square footage of the project.~~

35 ~~(3) The design-build entity that was awarded the project.~~

36 ~~(4) The estimated and actual length of time to complete the~~
37 ~~project.~~

38 ~~(5) The estimated and actual project costs.~~

39 ~~(6) Whether the project was met or altered.~~

40 ~~(7) The number and amount of project change orders.~~

1 ~~(8) A description of any written protests concerning any aspect~~
2 ~~of the solicitation, bid, proposal, or award of the design-build~~
3 ~~project, including the resolution of the protests.~~

4 ~~(9) An assessment of the prequalification process and criteria.~~

5 ~~(10) An assessment of the effect of retaining 5 percent retention~~
6 ~~on the project.~~

7 ~~(11) A description of the Labor Force Compliance Program and~~
8 ~~an assessment of the project impact, where required.~~

9 ~~(12) A description of the method used to award the contract. If~~
10 ~~best value was the method, the report shall describe the factors~~
11 ~~used to evaluate the bid, including the weighting of each factor~~
12 ~~and an assessment of the effectiveness of the methodology.~~

13 ~~(13) An assessment of the project impact of “skilled labor force~~
14 ~~availability.”~~

15 ~~(14) An assessment of the design-build dollar limits on county~~
16 ~~projects. This assessment shall include projects where the county~~
17 ~~wanted to use design-build and was precluded by the dollar~~
18 ~~limitation. This assessment shall also include projects where the~~
19 ~~best value method was not used due to dollar limitations.~~

20 ~~(15) An assessment of the most appropriate uses for the~~
21 ~~design-build approach.~~

22 ~~(n) Any county that elects not to use the authority granted by~~
23 ~~this section may submit a report to the Legislative Analyst’s Office~~
24 ~~explaining why the county elected not to use the design-build~~
25 ~~method.~~

26 ~~(o) On or before January 1, 2014, the Legislative Analyst shall~~
27 ~~report to the Legislature on the use of the design-build method by~~
28 ~~counties pursuant to this section, including the information listed~~
29 ~~in subdivision (m) and (p). The report may include~~
30 ~~recommendations for modifying or extending this section.~~

31 ~~(p) The Legislative Analyst shall complete a fact-based analysis~~
32 ~~of the use of the design-build method by counties pursuant to this~~
33 ~~section, utilizing the information provided pursuant to subdivision~~
34 ~~(m) and any independent information provided by the public or~~
35 ~~interested parties. The Legislative Analyst shall select a~~
36 ~~representative sample of projects under this section and review~~
37 ~~available public records and reports, media reports, and related~~
38 ~~information in its analysis. The Legislative Analyst shall compile~~
39 ~~the information required to be analyzed pursuant to this subdivision~~
40 ~~into a report, which shall be provided to the Legislature. The report~~

1 shall include conclusions describing the actual cost of projects
2 procured pursuant to this section, whether the project schedule
3 was met or altered, and whether projects needed or used project
4 change orders.

5 (q) Except as provided in this section, this act shall not be
6 construed to affect the application of any other law.

7 (r) This section shall remain in effect only until July 1, 2014,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before July 1, 2014, deletes or extends that date.

10 SEC. 7. Section 20175.2 of the Public Contract Code is
11 repealed.

12 ~~20175.2.~~ (a) (1) A city, with approval of the appropriate city
13 council, may utilize an alternative procedure for bidding on
14 building construction projects in the city in excess of one million
15 dollars (\$1,000,000), except as provided in subdivision (p).

16 (2) Cities may award the project using either the lowest
17 responsible bidder or by best value.

18 (b) (1) It is the intent of the Legislature to enable cities to utilize
19 cost-effective options for building and modernizing public
20 facilities. The Legislature also recognizes the national trend,
21 including authorization in California, to allow public entities to
22 utilize design-build contracts as a project delivery method. It is
23 not the intent of the Legislature to authorize this procedure for
24 transportation facilities, including, but not limited to, roads and
25 bridges.

26 (2) The Legislature also finds and declares that utilizing a
27 design-build contract requires a clear understanding of the roles
28 and responsibilities of each participant in the design-build process.
29 The Legislature also finds that the cost-effective benefits to cities
30 are achieved by shifting the liability and risk for cost containment
31 and project completion to the design-build entity.

32 (3) It is the intent of the Legislature to provide an alternative
33 and optional procedure for bidding and building construction
34 projects for cities.

35 (4) The design-build approach may be used, but is not limited
36 to use, when it is anticipated that it will: reduce project cost,
37 expedite project completion, or provide design features not
38 achievable through the design-bid-build method.

39 (5) (A) For contracts for public works projects awarded prior
40 to the effective date of the regulations adopted by the Department

1 of Industrial Relations pursuant to subdivision (g) of Section 1771.5
2 of the Labor Code, if a city council elects to proceed under this
3 section, the city council shall establish and enforce a labor
4 compliance program containing the requirements outlined in
5 Section 1771.5 of the Labor Code, or it shall contract with a third
6 party to operate a labor compliance program containing the
7 requirements outlined in Section 1771.5 of the Labor Code. This
8 requirement shall not apply to any project where the city or the
9 design-build entity has entered into a collective bargaining
10 agreement or agreements that bind all of the contractors performing
11 work on the projects.

12 (B) For contracts for public works projects awarded on or after
13 the effective date of the regulations adopted by the Department of
14 Industrial Relations pursuant to subdivision (g) of Section 1771.5
15 of the Labor Code, the city council shall reimburse the department
16 for its reasonable and directly related costs of performing prevailing
17 wage monitoring and enforcement on public works projects
18 pursuant to rates established by the department as set forth in
19 subdivision (h) of Section 1771.5 of the Labor Code. All moneys
20 collected pursuant to this paragraph shall be deposited in the State
21 Public Works Enforcement Fund created by Section 1771.3 of the
22 Labor Code, and shall be used only for enforcement of prevailing
23 wage requirements on those projects.

24 (C) In lieu of reimbursing the Department of Industrial Relations
25 for its reasonable and directly related costs of performing
26 monitoring and enforcement on public works projects, the city
27 council may elect to continue operating an existing previously
28 approved labor compliance program to monitor and enforce
29 prevailing wage requirements on the project if it has either not
30 contracted with a third party to conduct its labor compliance
31 program and requests and receives approval from the department
32 to continue its existing program or it enters into a collective
33 bargaining agreement that binds all of the contractors performing
34 work on the project and that includes a mechanism for resolving
35 disputes about the payment of wages.

36 (e) As used in this section:

37 (1) “Best value” means a value determined by objectives relative
38 to price, features, functions, and life-cycle costs.

1 (2) “Design-build” means a procurement process in which both
2 the design and construction of a project are procured from a single
3 entity.

4 (3) “Design-build entity” means a partnership, corporation, or
5 other legal entity that is able to provide appropriately licensed
6 contracting, architectural, and engineering services, as needed,
7 pursuant to a design-build contract.

8 (4) “Project” means the construction of a building and
9 improvements directly related to the construction of a building,
10 but does not include streets and highways, public rail transit, or
11 water resource facilities and infrastructure.

12 (d) Design-build projects shall progress in a four-step process,
13 as follows:

14 (1) (A) The city shall prepare a set of documents setting forth
15 the scope of the project. The documents may include, but are not
16 limited to, the size, type, and desired design character of the
17 buildings and site, performance specifications covering the quality
18 of materials, equipment, and workmanship, preliminary plans or
19 building layouts, or any other information deemed necessary to
20 describe adequately the city’s needs. The performance
21 specifications and any plans shall be prepared by a design
22 professional who is duly licensed and registered in California.

23 (B) Any architect or engineer retained by the city to assist in
24 the development of the project-specific documents shall not be
25 eligible to participate in the preparation of a bid with any
26 design-build entity for that project.

27 (2) (A) Based on the documents prepared in paragraph (1), the
28 city shall prepare a request for proposals that invites interested
29 parties to submit competitive sealed proposals in the manner
30 prescribed by the city. The request for proposals shall include, but
31 is not limited to, the following elements:

32 (i) Identification of the basic scope and needs of the project or
33 contract, the expected cost range, and other information deemed
34 necessary by the city to inform interested parties of the contracting
35 opportunity, to include the methodology that will be used by the
36 city to evaluate proposals, and specifically if the contract will be
37 awarded to the lowest responsible bidder.

38 (ii) Significant objective factors which the city reasonably
39 expects to consider in evaluating proposals, including cost or price
40 and all nonprice related factors.

1 ~~(iii) The relative importance or weight assigned to each of the~~
2 ~~factors identified in the request for proposals.~~

3 ~~(B) With respect to clause (iii) of subparagraph (A), if a~~
4 ~~nonweighted system is used, the agency shall specifically disclose~~
5 ~~whether all evaluation factors, other than cost or price, when~~
6 ~~combined are:~~

7 ~~(i) Significantly more important than cost or price.~~

8 ~~(ii) Approximately equal in importance to cost or price.~~

9 ~~(iii) Significantly less important than cost or price.~~

10 ~~(C) If the city chooses to reserve the right to hold discussions~~
11 ~~or negotiations with responsive bidders, it shall so specify in the~~
12 ~~request for proposal and shall publish separately, or incorporate~~
13 ~~into the request for proposal, applicable rules and procedures to~~
14 ~~be observed by the city to ensure that any discussions or~~
15 ~~negotiations are conducted in good faith.~~

16 ~~(3) (A) The city shall establish a procedure to prequalify~~
17 ~~design-build entities using a standard questionnaire developed by~~
18 ~~the city. In preparing the questionnaire, the city shall consult with~~
19 ~~the construction industry, including representatives of the building~~
20 ~~trades and surety industry. This questionnaire shall require~~
21 ~~information including, but not limited to, all of the following:~~

22 ~~(i) If the design-build entity is a partnership, limited partnership,~~
23 ~~or other association, a listing of all of the partners, general partners,~~
24 ~~or association members known at the time of bid submission who~~
25 ~~will participate in the design-build contract, including, but not~~
26 ~~limited to, mechanical subcontractors.~~

27 ~~(ii) Evidence that the members of the design-build entity have~~
28 ~~completed, or demonstrated the experience, competency, capability,~~
29 ~~and capacity to complete projects of similar size, scope, or~~
30 ~~complexity, and that proposed key personnel have sufficient~~
31 ~~experience and training to competently manage and complete the~~
32 ~~design and construction of the project, as well as a financial~~
33 ~~statement that assures the city that the design-build entity has the~~
34 ~~capacity to complete the project.~~

35 ~~(iii) The licenses, registration, and credentials required to design~~
36 ~~and construct the project, including information on the revocation~~
37 ~~or suspension of any license, credential, or registration.~~

38 ~~(iv) Evidence that establishes that the design-build entity has~~
39 ~~the capacity to obtain all required payment and performance~~
40 ~~bonding, liability insurance, and errors and omissions insurance.~~

1 ~~(v) Any prior serious or willful violation of the California~~
2 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
3 ~~(commencing with Section 6300) of Division 5 of the Labor Code~~
4 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
5 ~~Law 91-596) settled against any member of the design-build entity,~~
6 ~~and information concerning workers' compensation experience~~
7 ~~history and worker safety program.~~

8 ~~(vi) Information concerning any debarment, disqualification,~~
9 ~~or removal from a federal, state, or local government public works~~
10 ~~project. Any instance where an entity, its owners, officers, or~~
11 ~~managing employees submitted a bid on a public works project~~
12 ~~and were found to be nonresponsive, or were found by an awarding~~
13 ~~body not to be a responsible bidder.~~

14 ~~(vii) Any instance where the entity, its owners, officers, or~~
15 ~~managing employees defaulted on a construction contract.~~

16 ~~(viii) Any violations of the Contractors State License Law~~
17 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~
18 ~~Business and Professions Code), excluding alleged violations of~~
19 ~~federal or state law including the payment of wages, benefits,~~
20 ~~apprenticeship requirements, or personal income tax withholding,~~
21 ~~or of Federal Insurance Contribution Act (FICA) withholding~~
22 ~~requirements settled against any member of the design-build entity.~~

23 ~~(ix) Information concerning the bankruptcy or receivership of~~
24 ~~any member of the design-build entity, including information~~
25 ~~concerning any work completed by a surety.~~

26 ~~(x) Information concerning all settled adverse claims, disputes,~~
27 ~~or lawsuits between the owner of a public works project and any~~
28 ~~member of the design-build entity during the five years preceding~~
29 ~~submission of a bid pursuant to this section, in which the claim,~~
30 ~~settlement, or judgment exceeds fifty thousand dollars (\$50,000).~~
31 ~~Information shall also be provided concerning any work completed~~
32 ~~by a surety during this period.~~

33 ~~(xi) In the case of a partnership or an association that is not a~~
34 ~~legal entity, a copy of the agreement creating the partnership or~~
35 ~~association and specifying that all partners or association members~~
36 ~~agree to be fully liable for the performance under the design-build~~
37 ~~contract.~~

38 ~~(xii) (I) Any instance in which the entity, or any of its members,~~
39 ~~owners, officers, or managing employees was, during the five years~~
40 ~~preceding submission of a bid pursuant to this section, determined~~

1 by a court of competent jurisdiction to have submitted, or legally
2 admitted for purposes of a criminal plea to have submitted either
3 of the following:

4 (ia) Any claim to any public agency or official in violation of
5 the federal False Claims Act (31 U.S.C. Sec. 3729 et seq.);

6 (ib) Any claim to any public official in violation of the
7 California False Claims Act (Article 9 (commencing with Section
8 12650) of Chapter 6 of Part 2 of Division 3 of the Government
9 Code);

10 (H) Information provided pursuant to this subdivision shall
11 include the name and number of any case filed, the court in which
12 it was filed, and the date on which it was filed. The entity may
13 also provide further information regarding any such instance,
14 including any mitigating or extenuating circumstances that the
15 entity wishes the city to consider.

16 (B) The information required pursuant to this subdivision shall
17 be verified under oath by the entity and its members in the manner
18 in which civil pleadings in civil actions are verified. Information
19 that is not a public record pursuant to the California Public Records
20 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
21 of Title 1 of the Government Code) shall not be open to public
22 inspection.

23 (4) The city shall establish a procedure for final selection of the
24 design-build entity. Selection shall be based on either of the
25 following criteria:

26 (A) A competitive bidding process resulting in lump-sum bids
27 by the prequalified design-build entities. Awards shall be made to
28 the lowest responsible bidder.

29 (B) The city may use a design-build competition based upon
30 best value and other criteria set forth in paragraph (2) of
31 subdivision (d). The design-build competition shall include the
32 following elements:

33 (i) Competitive proposals shall be evaluated by using only the
34 criteria and selection procedures specifically identified in the
35 request for proposal. However, the following minimum factors
36 shall each represent at least 10 percent of the total weight of
37 consideration given to all criteria factors: price, technical design
38 and construction expertise, life-cycle costs over 15 years or more,
39 skilled labor force availability, and acceptable safety record.

~~(ii) Once the evaluation is complete, the top three responsive bidders shall be ranked sequentially from the most advantageous to the least.~~

~~(iii) The award of the contract shall be made to the responsible bidder whose proposal is determined, in writing, to be the most advantageous.~~

~~(iv) Notwithstanding any provision of this code, upon issuance of a contract award, the city shall publicly announce its award, identifying the contractor to whom the award is made, along with a written decision supporting its contract award and stating the basis of the award. The notice of award shall also include the city's second and third ranked design-build entities.~~

~~(v) For purposes of this paragraph, "skilled labor force availability" shall be determined by the existence of an agreement with a registered apprenticeship program, approved by the California Apprenticeship Council, which has graduated apprentices in each of the preceding five years. This graduation requirement shall not apply to programs providing apprenticeship training for any craft that has been deemed by the Department of Labor and the Department of Industrial Relations to be an apprenticeable craft in the five years prior to enactment of this act.~~

~~(vi) For purposes of this paragraph, a bidder's "safety record" shall be deemed "acceptable" if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury/illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the bidder is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.~~

~~(e) (1) Any design-build entity that is selected to design and build a project pursuant to this section shall possess or obtain sufficient bonding to cover the contract amount for nondesign services and errors and omissions insurance coverage sufficient to cover all design and architectural services provided in the contract. This section does not prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.~~

1 ~~(2) Any payment or performance bond written for the purposes~~
2 ~~of this section shall be written using a bond form developed by~~
3 ~~the city.~~

4 ~~(f) All subcontractors that were not listed by the design-build~~
5 ~~entity in accordance with clause (i) of subparagraph (A) of~~
6 ~~paragraph (3) of subdivision (d) shall be awarded by the~~
7 ~~design-build entity in accordance with the design-build process~~
8 ~~set forth by the city in the design-build package. All subcontractors~~
9 ~~bidding on contracts pursuant to this section shall be afforded the~~
10 ~~protections contained in Chapter 4 (commencing with Section~~
11 ~~4100) of Part 1. The design-build entity shall do both of the~~
12 ~~following:~~

13 ~~(1) Provide public notice of the availability of work to be~~
14 ~~subcontracted in accordance with the publication requirements~~
15 ~~applicable to the competitive bidding process of the city.~~

16 ~~(2) Provide a fixed date and time on which the subcontracted~~
17 ~~work will be awarded in accordance with the procedure established~~
18 ~~pursuant to this section.~~

19 ~~(g) Lists of subcontractors, bidders, and bid awards relating to~~
20 ~~the project shall be submitted by the design-build entity to the~~
21 ~~awarding body within 14 days of the award. These documents are~~
22 ~~deemed to be public records and shall be available for public~~
23 ~~inspection pursuant to this chapter and Article 1 (commencing~~
24 ~~with Section 6250) of Chapter 3.5 of Division 7 of the Government~~
25 ~~Code.~~

26 ~~(h) The minimum performance criteria and design standards~~
27 ~~established pursuant to paragraph (1) of subdivision (d) shall be~~
28 ~~adhered to by the design-build entity. Any deviations from those~~
29 ~~standards may only be allowed by written consent of the city.~~

30 ~~(i) The city may retain the services of a design professional or~~
31 ~~construction project manager, or both, throughout the course of~~
32 ~~the project in order to ensure compliance with this section.~~

33 ~~(j) Contracts awarded pursuant to this section shall be valid until~~
34 ~~the project is completed.~~

35 ~~(k) Nothing in this section is intended to affect, expand, alter,~~
36 ~~or limit any rights or remedies otherwise available at law.~~

37 ~~(l) (1) If the city elects to award a project pursuant to this~~
38 ~~section, retention proceeds withheld by the city from the~~
39 ~~design-build entity shall not exceed 5 percent if a performance and~~

1 payment bond, issued by an admitted surety insurer, is required in
2 the solicitation of bids:

3 ~~(2) In a contract between the design-build entity and the~~
4 ~~subcontractor, and in a contract between a subcontractor and any~~
5 ~~subcontractor thereunder, the percentage of the retention proceeds~~
6 ~~withheld may not exceed the percentage specified in the contract~~
7 ~~between the city and the design-build entity. If the design-build~~
8 ~~entity provides written notice to any subcontractor who is not a~~
9 ~~member of the design-build entity, prior to or at the time the bid~~
10 ~~is requested, that a bond may be required and the subcontractor~~
11 ~~subsequently is unable or refuses to furnish a bond to the~~
12 ~~design-build entity, then the design-build entity may withhold~~
13 ~~retention proceeds in excess of the percentage specified in the~~
14 ~~contract between the city and the design-build entity from any~~
15 ~~payment made by the design-build entity to the subcontractor.~~

16 ~~(m) Each city that elects to proceed under this section and uses~~
17 ~~the design-build method on a public works project shall submit to~~
18 ~~the Legislative Analyst's Office before December 1, 2014, a report~~
19 ~~containing a description of each public works project procured~~
20 ~~through the design-build process that is completed after January~~
21 ~~1, 2011, and before November 1, 2014. The report shall include,~~
22 ~~but shall not be limited to, all of the following information:~~

- 23 ~~(1) The type of project.~~
24 ~~(2) The gross square footage of the project.~~
25 ~~(3) The design-build entity that was awarded the project.~~
26 ~~(4) The estimated and actual project costs.~~
27 ~~(5) The estimated and actual length of time to complete the~~
28 ~~project.~~
29 ~~(6) A description of any written protests concerning any aspect~~
30 ~~of the solicitation, bid, proposal, or award of the design-build~~
31 ~~project, including the resolution of the protests.~~
32 ~~(7) An assessment of the prequalification process and criteria.~~
33 ~~(8) An assessment of the effect of retaining 5 percent retention~~
34 ~~on the project.~~
35 ~~(9) A description of the Labor Force Compliance Program and~~
36 ~~an assessment of the project impact, where required.~~
37 ~~(10) A description of the method used to award the contract. If~~
38 ~~the best value method was used, the report shall describe the factors~~
39 ~~used to evaluate the bid, including the weighting of each factor~~
40 ~~and an assessment of the effectiveness of the methodology.~~

1 ~~(11) An assessment of the project impact of “skilled labor force~~
2 ~~availability.”~~

3 ~~(12) An assessment of the most appropriate uses for the~~
4 ~~design-build approach.~~

5 ~~(n) Any city that elects not to use the authority granted by this~~
6 ~~section may submit a report to the Legislative Analyst’s Office~~
7 ~~explaining why the city elected not to use the design-build method.~~

8 ~~(o) On or before January 1, 2015, the Legislative Analyst’s~~
9 ~~Office shall report to the Legislature on the use of the design-build~~
10 ~~method by cities pursuant to this section, including the information~~
11 ~~listed in subdivision (m). The report may include recommendations~~
12 ~~for modifying or extending this section.~~

13 ~~(p) Except as provided in this section, nothing in this act shall~~
14 ~~be construed to affect the application of any other law.~~

15 ~~(q) Before January 1, 2011, the project limitation of one million~~
16 ~~dollars (\$1,000,000), as set forth in subdivision (a), shall not apply~~
17 ~~to any city in the Counties of Solano and Yolo, or to the Cities of~~
18 ~~Stanton and Victorville.~~

19 ~~(r) This section shall remain in effect only until January 1, 2016,~~
20 ~~and as of that date is repealed, unless a later enacted statute, that~~
21 ~~is enacted before January 1, 2016, deletes or extends that date.~~

22 SEC. 8. Section 20193 of the Public Contract Code is repealed.

23 ~~20193. (a) (1) Notwithstanding any other law and subject to~~
24 ~~the limitations of this article, a qualified entity, with approval of~~
25 ~~its governing body, may utilize an alternative procedure on bidding~~
26 ~~on projects in excess of two million five hundred thousand dollars~~
27 ~~(\$2,500,000).~~

28 ~~(2) Only 20 design-build projects shall be authorized under this~~
29 ~~article.~~

30 ~~(3) A qualified entity may award a project using either the lowest~~
31 ~~responsible bidder or by best value.~~

32 ~~(4) For purposes of this article, “qualified entity” means an~~
33 ~~entity that meets both of the following:~~

34 ~~(A) The entity is any of the following:~~

35 ~~(i) A city.~~

36 ~~(ii) A county.~~

37 ~~(iii) A city and county.~~

38 ~~(iv) A special district.~~

39 ~~(B) The entity operates wastewater facilities, solid waste~~
40 ~~management facilities, or water recycling facilities.~~

~~(b) (1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, if a qualified entity elects to proceed under this section, the qualified entity shall establish and enforce a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code. This requirement shall not apply to projects where the qualified entity or the design-build entity has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.~~

~~(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the qualified entity shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.~~

~~(3) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the qualified entity may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.~~

~~(c) As used in this section:~~

1 (1) “Best value” means a value determined by objective criteria
2 related to price, features, functions, small business contracting
3 plans, past performance, and life-cycle costs.

4 (2) “Design-build” means a procurement process in which both
5 the design and construction of a project are procured from a single
6 entity.

7 (3) “Design-build entity” means a partnership, corporation, or
8 other legal entity that is able to provide appropriately licensed
9 contracting, architectural, and engineering services as needed
10 pursuant to a design-build contract.

11 (4) “Project” means the construction of regional and local
12 wastewater treatment facilities, regional and local solid waste
13 facilities, or regional and local water recycling facilities.

14 (d) Design-build projects shall progress in a four-step process,
15 as follows:

16 (1) (A) The qualified entity shall prepare a set of documents
17 setting forth the scope of the project. The documents may include,
18 but are not limited to, the size, type, and desired design character
19 of the project and site, performance specifications covering the
20 quality of materials, equipment, and workmanship, preliminary
21 plans or project layouts, or any other information deemed necessary
22 to describe adequately the qualified entity’s needs. The
23 performance specifications and any plans shall be prepared by a
24 design professional who is duly licensed and registered in
25 California.

26 (B) Any architect or engineer retained by the qualified entity
27 to assist in the development of the project specific documents shall
28 not be eligible to participate in the preparation of a bid with any
29 design-build entity for that project.

30 (2) (A) Based on the documents prepared in paragraph (1), the
31 qualified entity shall prepare a request for proposals that invites
32 interested parties to submit competitive sealed proposals in the
33 manner prescribed by the qualified entity. The request for proposals
34 shall include, but is not limited to, the following elements:

35 (i) Identification of the basic scope and needs of the project or
36 contract, the expected cost range, and other information deemed
37 necessary by the qualified entity to inform interested parties of the
38 contracting opportunity, to include the methodology that will be
39 used by the qualified entity to evaluate proposals and specifically
40 if the contract will be awarded to the lowest responsible bidder.

~~(ii) Significant factors that the qualified entity reasonably expects to consider in evaluating proposals, including cost or price and all nonprice related factors.~~

~~(iii) The relative importance of weight assigned to each of the factors identified in the request for proposals.~~

~~(B) With respect to clause (iii) of subparagraph (A), if a nonweighted system is used, the qualified entity shall specifically disclose whether all evaluation factors other than cost or price when combined are:~~

~~(i) Significantly more important than cost or price.~~

~~(ii) Approximately equal in importance to cost or price.~~

~~(iii) Significantly less important than cost or price.~~

~~(C) If the qualified entity chooses to reserve the right to hold discussions or negotiations with responsive bidders, it shall so specify in the request for proposal and shall publish separately or incorporate into the request for proposal applicable rules and procedures to be observed by the qualified entity to ensure that any discussions or negotiations are conducted in good faith.~~

~~(3) (A) The qualified entity shall establish a procedure to prequalify design-build entities using a standard questionnaire developed by the qualified entity. In preparing the questionnaire, the qualified entity shall consult with the construction industry, including representatives of the building trades and surety industry. This questionnaire shall require information including, but not limited to, all of the following:~~

~~(i) If the design-build entity is a partnership, limited partnership, or other association, a listing of all of the partners, general partners, or association members known at the time of bid submission who will participate in the design-build contract, including, but not limited to, mechanical subcontractors.~~

~~(ii) Evidence that the members of the design-build entity have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, as well as a financial statement that assures the special district that the design-build entity has the capacity to complete the project.~~

1 ~~(iii) The licenses, registration, and credentials required to design~~
2 ~~and construct the project, including information on the revocation~~
3 ~~or suspension of any license, credential, or registration.~~

4 ~~(iv) Evidence that establishes that the design-build entity has~~
5 ~~the capacity to obtain all required payment and performance~~
6 ~~bonding, liability insurance, and errors and omissions insurance.~~

7 ~~(v) Any prior serious or willful violation of the California~~
8 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
9 ~~(commencing with Section 6300) of Division 5 of the Labor Code~~
10 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
11 ~~Law 91-596), settled against any member of the design-build entity,~~
12 ~~and information concerning workers' compensation experience~~
13 ~~history and worker safety program.~~

14 ~~(vi) Information concerning any debarment, disqualification,~~
15 ~~or removal from a federal, state, or local government public works~~
16 ~~project. Any instance where an entity, its owners, officers, or~~
17 ~~managing employees submitted a bid on a public works project~~
18 ~~and were found to be nonresponsive, or were found by an awarding~~
19 ~~body not to be a responsible bidder.~~

20 ~~(vii) Any instance where the entity, its owner, officers, or~~
21 ~~managing employees defaulted on a construction contract.~~

22 ~~(viii) Any violations of the Contractors' State License Law~~
23 ~~(Chapter 9 (commencing with Section 7000) of Division 3 of the~~
24 ~~Business and Professions Code), excluding alleged violations of~~
25 ~~federal or state law including the payment of wages, benefits,~~
26 ~~apprenticeship requirements, or personal income tax withholding,~~
27 ~~or of Federal Insurance Contribution Act (FICA) withholding~~
28 ~~requirements settled against any member of the design-build entity.~~

29 ~~(ix) Information concerning the bankruptcy or receivership of~~
30 ~~any member of the design-build entity, including information~~
31 ~~concerning any work completed by a surety.~~

32 ~~(x) Information concerning all settled adverse claims, disputes,~~
33 ~~or lawsuits between the owner of a public works project and any~~
34 ~~member of the design-build entity during the five years preceeding~~
35 ~~submission of a bid pursuant to this section, in which the claim,~~
36 ~~settlement, or judgment exceeds fifty thousand dollars (\$50,000).~~
37 ~~Information shall also be provided concerning any work completed~~
38 ~~by a surety during this period.~~

39 ~~(xi) In the case of a partnership or other association, that is not~~
40 ~~a legal entity, a copy of the agreement creating the partnership or~~

1 association and specifying that all partners or association members
2 agree to be fully liable for the performance under the design-build
3 contract.

4 (B) The information required pursuant to this subdivision shall
5 be verified under oath by the entity and its members in the manner
6 in which civil pleadings in civil actions are verified. Information
7 that is not a public record pursuant to the California Public Records
8 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
9 of Title 1 of the Government Code) shall not be open to public
10 inspection.

11 (4) The qualified entity shall establish a procedure for final
12 selection of the design-build entity. Selection shall be based on
13 either of the following criteria:

14 (A) A competitive bidding process resulting in lump-sum bids
15 by the prequalified design-build entities. Awards shall be made to
16 the lowest responsible bidder.

17 (B) A qualified entity may use a design-build competition based
18 upon best value and other criteria set forth in paragraph (2) of
19 subdivision (d). The design-build competition shall include the
20 following elements:

21 (i) Competitive proposals shall be evaluated by using only the
22 criteria and selection procedures specifically identified in the
23 request for proposal. However, the following minimum factors
24 shall each represent at least 10 percent of the total weight of
25 consideration given to all criteria factors: price, technical design
26 and construction expertise, life-cycle costs over 15 years or more,
27 skilled labor force availability, and acceptable safety record.

28 (ii) Once the evaluation is complete, the top three responsive
29 bidders shall be ranked sequentially from the most advantageous
30 to the least.

31 (iii) The award of the contract shall be made to the responsible
32 bidder whose proposal is determined, in writing, to be the most
33 advantageous.

34 (iv) Notwithstanding any provision of this code, upon issuance
35 of a contract award, the qualified entity shall publicly announce
36 its award, identifying the contractor to which the award is made,
37 along with a written decision supporting its contract award and
38 stating the basis of the award. The notice of award shall also
39 include the qualified entity's second and third ranked design-build
40 entities.

1 ~~(v) For purposes of this paragraph, “skilled labor force~~
2 ~~availability” shall be determined by the existence of an agreement~~
3 ~~with a registered apprenticeship program, approved by the~~
4 ~~California Apprenticeship Council, which has graduated~~
5 ~~apprentices in each of the preceding five years. This graduation~~
6 ~~requirement shall not apply to programs providing apprenticeship~~
7 ~~training for any craft that has been deemed by the Department of~~
8 ~~Labor and the Department of Industrial Relations to be an~~
9 ~~apprenticeable craft in the five years prior to enactment of this act.~~

10 ~~(vi) For purposes of this paragraph, a bidder’s “safety record”~~
11 ~~shall be deemed “acceptable” if their experience modification rate~~
12 ~~for the most recent three-year period is an average of 1.00 or less,~~
13 ~~and their average total recordable injury/illness rate and average~~
14 ~~lost work rate for the most recent three-year period does not exceed~~
15 ~~the applicable statistical standards for its business category, or if~~
16 ~~the bidder is a party to an alternative dispute resolution system as~~
17 ~~provided for in Section 3201.5 of the Labor Code.~~

18 ~~(e) (1) Any design-build entity that is selected to design and~~
19 ~~build a project pursuant to this section shall possess or obtain~~
20 ~~sufficient bonding to cover the contract amount for nondesign~~
21 ~~services, and errors and omissions insurance coverage sufficient~~
22 ~~to cover all design and architectural services provided in the~~
23 ~~contract. This section does not prohibit a general or engineering~~
24 ~~contractor from being designated the lead entity on a design-build~~
25 ~~entity for the purposes of purchasing necessary bonding to cover~~
26 ~~the activities of the design-build entity.~~

27 ~~(2) Any payment or performance bond written for the purposes~~
28 ~~of this section shall be written using a bond form developed by~~
29 ~~the qualified entity.~~

30 ~~(f) All subcontractors that were not listed by the design-build~~
31 ~~entity in accordance with clause (i) of subparagraph (A) of~~
32 ~~paragraph (3) of subdivision (d) shall be awarded by the~~
33 ~~design-build entity in accordance with the design-build process~~
34 ~~set forth by the qualified entity in the design-build package. All~~
35 ~~subcontractors bidding on contracts pursuant to this section shall~~
36 ~~be afforded the protections contained in Chapter 4 (commencing~~
37 ~~with Section 4100) of Part 1. The design-build entity shall do both~~
38 ~~of the following:~~

39 ~~(1) Provide public notice of the availability of work to be~~
40 ~~subcontracted in accordance with the publication requirements~~

1 applicable to the competitive bidding process of the qualified
2 entity.

3 (2) Provide a fixed date and time on which the subcontracted
4 work will be awarded in accordance with the procedure established
5 pursuant to this section.

6 (g) The minimum performance criteria and design standards
7 established pursuant to paragraph (1) of subdivision (d) shall be
8 adhered to by the design-build entity. Any deviations from those
9 standards may only be allowed by written consent of the qualified
10 entity.

11 (h) The qualified entity may retain the services of a design
12 professional or construction project manager, or both, throughout
13 the course of the project in order to ensure compliance with this
14 section.

15 (i) Contracts awarded pursuant to this section shall be valid until
16 the project is completed.

17 (j) Nothing in this section is intended to affect, expand, alter,
18 or limit any rights or remedies otherwise available at law.

19 (k) (1) If the qualified entity elects to award a project pursuant
20 to this section, retention proceeds withheld by the qualified entity
21 from the design-build entity shall not exceed 5 percent if a
22 performance and payment bond, issued by an admitted surety
23 insurer, is required in the solicitation of bids.

24 (2) In a contract between the design-build entity and the
25 subcontractor, and in a contract between a subcontractor and any
26 subcontractor thereunder, the percentage of the retention proceeds
27 withheld may not exceed the percentage specified in the contract
28 between the qualified entity and the design-build entity. If the
29 design-build entity provides written notice to any subcontractor
30 who is not a member of the design-build entity, prior to or at the
31 time the bid is requested, that a bond may be required and the
32 subcontractor subsequently is unable or refuses to furnish a bond
33 to the design-build entity, then the design-build entity may withhold
34 retention proceeds in excess of the percentage specified in the
35 contract between the qualified entity and the design-build entity
36 from any payment made by the design-build entity to the
37 subcontractor.

38 (l) Each qualified entity that elects to proceed under this section
39 and uses the design-build method on a public works project shall
40 do both of the following:

1 ~~(1) Notify the Legislative Analyst's Office upon initiation of~~
2 ~~the project and upon completion of the project.~~

3 ~~(2) Submit to the Legislative Analyst's Office, upon completion~~
4 ~~of the project, a report containing a description of the public works~~
5 ~~project procured through the design-build process pursuant to this~~
6 ~~section and completed after January 1, 2009. The report shall~~
7 ~~include, but shall not be limited to, all of the following information:~~

8 ~~(A) The type of project.~~

9 ~~(B) The gross square footage of the project.~~

10 ~~(C) The design-build entity that was awarded the project.~~

11 ~~(D) The estimated and actual project costs.~~

12 ~~(E) A description of any written protests concerning any aspect~~
13 ~~of the solicitation, bid, proposal, or award of the design-build~~
14 ~~project, including the resolution of the protests.~~

15 ~~(F) An assessment of the prequalification process and criteria.~~

16 ~~(G) An assessment of the effect of retaining 5-percent retention~~
17 ~~on the project.~~

18 ~~(H) A description of the Labor Force Compliance Program and~~
19 ~~an assessment of the project impact, where required.~~

20 ~~(I) A description of the method used to award the contract. If~~
21 ~~best value was the method, the report shall describe the factors~~
22 ~~used to evaluate the bid, including the weighting of each factor~~
23 ~~and an assessment of the effectiveness of the methodology.~~

24 ~~(J) An assessment of the project impact of "skilled labor force~~
25 ~~availability."~~

26 ~~(K) An assessment of the most appropriate uses for the~~
27 ~~design-build approach.~~

28 ~~(m) Any qualified entity that elects not to use the authority~~
29 ~~granted by this section may submit a report to the Legislative~~
30 ~~Analyst's Office explaining why the qualified entity elected to not~~
31 ~~use the design-build method.~~

32 ~~(n) (1) In order to comply with paragraph (2) of subdivision~~
33 ~~(a), the Office of Planning and Research is required to maintain~~
34 ~~the list of entities that have applied and are eligible to be qualified~~
35 ~~for this authority.~~

36 ~~(2) Each entity that is interested in proceeding under the~~
37 ~~authority in this section must apply to the Office of Planning and~~
38 ~~Research.~~

39 ~~(A) The application to proceed must be in writing.~~

~~(B) An entity must have complied with the California Environmental Quality Act review process pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code prior to its application, and must include its approved notice of determination or notice of completion in its application.~~

~~(3) The Office of Planning and Research must approve or deny an application, in writing, within 30 days. The authority to deny an application shall only be exercised if the conditions set forth in either or both paragraph (2) of subdivision (a) and subparagraph (B) of paragraph (2) of this subdivision have not been satisfied.~~

~~(4) An entity utilizing this section must, after it determines it no longer is interested in using this authority, notify the Office of Planning and Research in writing within 30 days of its determination. Upon notification, the Office of Planning and Research may contact any previous applicants, denied pursuant to paragraph (2) of subdivision (a), to inform them of the availability to proceed under this section.~~

~~(e) The Legislative Analyst shall report to the Legislature on the use of the design-build method by qualified entities pursuant to this section, including the information listed in subdivision (f). The report may include recommendations for modifying or extending this section, and shall be submitted on either of the following dates, whichever occurs first:~~

~~(1) Within one year of the completion of the 20 projects, if the projects are completed prior to January 1, 2019.~~

~~(2) No later than January 1, 2020.~~

SEC. 9. Section 20209 of the Public Contract Code is repealed.

20209. Notwithstanding any other provision of law, any transit district may negotiate the purchase from, or the sale to, any federal, state, or local public agency of any real or personal property upon terms and conditions agreed to by the district and the public agency.

SEC. 10. Section 20301.5 of the Public Contract Code is repealed.

~~20301.5. (a) Notwithstanding Section 20301, the district may let a design-and-build contract for any project for a transit center or station, transit park-and-ride lot, bus and light rail maintenance facility, or administrative office building, or any combination of those, upon approval by the board of directors. The district also may let a design-and-build contract for the Fremont-South Bay Commuter Rail Project contained in Santa Clara County's 1996~~

1 ~~Measure B-Transportation Improvement Program, upon approval~~
2 ~~by the board of directors.~~

3 ~~(b) (1) If the board of directors elects to proceed under~~
4 ~~subdivision (a), before entering into any contract that requires~~
5 ~~advertising for bids for a project, the board shall cause to be~~
6 ~~prepared estimates, and shall prepare documents, for the solicitation~~
7 ~~of bids on a design-and-build basis.~~

8 ~~(2) For the purposes of this section, “design and build” means~~
9 ~~a method of procuring design and construction from a single~~
10 ~~source. The selection of the single source shall occur before the~~
11 ~~development of complete plans and specifications.~~

12 ~~(c) The request for submission of bids shall include all of the~~
13 ~~following:~~

14 ~~(1) A clear, precise description of the services to be provided~~
15 ~~and work to be performed.~~

16 ~~(2) A description of the format that submittals shall follow and~~
17 ~~the elements they shall contain, including the qualifications and~~
18 ~~relevant experience of the design professional and the contractor,~~
19 ~~and the criteria that shall be used in evaluating the submittal,~~
20 ~~including the bid price.~~

21 ~~(3) A requirement that bidders submit their proposals with the~~
22 ~~construction bid price and all cost information in a separate sealed~~
23 ~~envelope.~~

24 ~~(4) The date on which the submittals are due, and the timetable~~
25 ~~that will be used in reviewing and evaluating the submittals.~~

26 ~~(d) All submittals received prior to the closing time stated in~~
27 ~~the request for submittal shall be reviewed to determine those that~~
28 ~~meet the format requirements and the standards specified in the~~
29 ~~request for submittal.~~

30 ~~(e) The contract shall be awarded to the lowest responsible~~
31 ~~bidder meeting the standards of the request for submittal.~~

32 ~~(f) For the purposes of this section, selections of design~~
33 ~~professionals shall meet the standards set forth in Chapter 10~~
34 ~~(commencing with Section 4525) of Division 5 of Title 1 of the~~
35 ~~Government Code.~~

36 ~~(g) This section shall apply only to a project that is under the~~
37 ~~supervision of a licensed general building contractor, as defined~~
38 ~~in Section 7057 of the Business and Professions Code.~~

1 SEC. 11. Article 22 (commencing with Section 20360) of
2 Chapter 1 of Part 3 of Division 2 of the Public Contract Code is
3 repealed.

4 SEC. 12. Section 20688.6 of the Public Contract Code is
5 repealed.

6 ~~20688.6.—(a) (1) Notwithstanding any other law, an agency,~~
7 ~~with approval of its duly constituted board in a public hearing,~~
8 ~~may utilize an alternative procedure for bidding on projects in the~~
9 ~~community in excess of one million dollars (\$1,000,000) and may~~
10 ~~award the project using either the lowest responsible bidder or by~~
11 ~~best value.~~

12 ~~(2) Only 10 design-build projects shall be authorized under this~~
13 ~~section.~~

14 ~~(b) (1) It is the intent of the Legislature to enable entities as~~
15 ~~provided in Part 1 (commencing with Section 33000) of Division~~
16 ~~24 of the Health and Safety Code to utilize design-build for those~~
17 ~~infrastructure improvements authorized in Sections 33421, 33445,~~
18 ~~and 33445.1 of the Health and Safety Code and subject to the~~
19 ~~limitations on that authority described in Section 33421.1 of the~~
20 ~~Health and Safety Code.~~

21 ~~(2) The Legislature also finds and declares that utilizing a~~
22 ~~design-build contract requires a clear understanding of the roles~~
23 ~~and responsibilities of each participant in the design-build process.~~

24 ~~(3) (A) For contracts for public works projects awarded prior~~
25 ~~to the effective date of the regulations adopted by the Department~~
26 ~~of Industrial Relations pursuant to subdivision (g) of Section 1771.5~~
27 ~~of the Labor Code, if the board elects to proceed under this section,~~
28 ~~the board shall establish and enforce a labor compliance program~~
29 ~~containing the requirements outlined in Section 1771.5 of the Labor~~
30 ~~Code, or it shall contract with a third party to operate a labor~~
31 ~~compliance program containing the requirements outlined in~~
32 ~~Section 1771.5 of the Labor Code. This requirement shall not apply~~
33 ~~to projects where the agency or the design-build entity has entered~~
34 ~~into a collective bargaining agreement or agreements that bind all~~
35 ~~of the contractors performing work on the projects.~~

36 ~~(B) For contracts for public works projects awarded on or after~~
37 ~~the effective date of the regulations adopted by the Department of~~
38 ~~Industrial Relations pursuant to subdivision (g) of Section 1771.5~~
39 ~~of the Labor Code, the board shall reimburse the department for~~
40 ~~its reasonable and directly related costs of performing prevailing~~

~~wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.~~

~~(C) In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing monitoring and enforcement on public works projects, the board may elect to continue operating an existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on the project if it has either not contracted with a third party to conduct its labor compliance program and requests and receives approval from the department to continue its existing program or it enters into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.~~

~~(e) As used in this section:~~

~~(1) “Best value” means a value determined by objective criteria related to price, features, functions, and life-cycle costs.~~

~~(2) “Design-build” means a procurement process in which both the design and construction of a project are procured from a single entity.~~

~~(3) “Design-build entity” means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.~~

~~(4) “Project” means those infrastructure improvements authorized in Sections 33421, 33445, and 33445.1 of the Health and Safety Code and subject to the limitations and conditions on that authority described in Article 10 (commencing with Section 33420) and Article 11 (commencing with Section 33430) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code.~~

~~(d) Design-build projects shall progress in a four-step process, as follows:~~

~~(1) (A) The agency shall prepare a set of documents setting forth the scope of the project. The documents may include, but are not limited to, the size, type, and desired design character of the~~

1 public improvement, performance specifications covering the
2 quality of materials, equipment, and workmanship, preliminary
3 plans or building layouts, or any other information deemed
4 necessary to describe adequately the agency's needs. The
5 performance specifications and any plans shall be prepared by a
6 design professional who is duly licensed and registered in
7 California.

8 (B) Any architect or engineer retained by the agency to assist
9 in the development of the project specific documents shall not be
10 eligible to participate in the preparation of a bid with any
11 design-build entity for that project.

12 (2) (A) Based on the documents prepared as described in
13 paragraph (1), the agency shall prepare a request for proposals that
14 invites interested parties to submit competitive sealed proposals
15 in the manner prescribed by the agency. The request for proposals
16 shall include, but is not limited to, the following elements:

17 (i) Identification of the basic scope and needs of the project or
18 contract, the expected cost range, and other information deemed
19 necessary by the agency to inform interested parties of the
20 contracting opportunity, to include the methodology that will be
21 used by the agency to evaluate proposals and specifically if the
22 contract will be awarded to the lowest responsible bidder.

23 (ii) Significant factors that the agency reasonably expects to
24 consider in evaluating proposals, including cost or price and all
25 nonprice-related factors.

26 (iii) The relative importance of the weight assigned to each of
27 the factors identified in the request for proposals.

28 (B) With respect to clause (iii) of subparagraph (A), if a
29 nonweighted system is used, the agency shall specifically disclose
30 whether all evaluation factors other than cost or price when
31 combined are:

32 (i) Significantly more important than cost or price.

33 (ii) Approximately equal in importance to cost or price.

34 (iii) Significantly less important than cost or price.

35 (C) If the agency chooses to reserve the right to hold discussions
36 or negotiations with responsive bidders, it shall so specify in the
37 request for proposal and shall publish separately or incorporate
38 into the request for proposal applicable rules and procedures to be
39 observed by the agency to ensure that any discussions or
40 negotiations are conducted in good faith.

1 ~~(3) (A) The agency shall establish a procedure to prequalify~~
2 ~~design-build entities using a standard questionnaire developed by~~
3 ~~the agency. In preparing the questionnaire, the agency shall consult~~
4 ~~with the construction industry, including representatives of the~~
5 ~~building trades and surety industry. This questionnaire shall require~~
6 ~~information including, but not limited to, all of the following:~~

7 ~~(i) If the design-build entity is a partnership, limited partnership,~~
8 ~~or other association, a listing of all of the partners, general partners,~~
9 ~~or association members known at the time of bid submission who~~
10 ~~will participate in the design-build contract, including, but not~~
11 ~~limited to, mechanical subcontractors.~~

12 ~~(ii) Evidence that the members of the design-build entity have~~
13 ~~completed, or demonstrated the experience, competency, capability,~~
14 ~~and capacity to complete, projects of similar size, scope, or~~
15 ~~complexity, and that proposed key personnel have sufficient~~
16 ~~experience and training to competently manage and complete the~~
17 ~~design and construction of the project, as well as a financial~~
18 ~~statement that assures the agency that the design-build entity has~~
19 ~~the capacity to complete the project.~~

20 ~~(iii) The licenses, registration, and credentials required to design~~
21 ~~and construct the project, including information on the revocation~~
22 ~~or suspension of any license, credential, or registration.~~

23 ~~(iv) Evidence that establishes that the design-build entity has~~
24 ~~the capacity to obtain all required payment and performance~~
25 ~~bonding, liability insurance, and errors and omissions insurance.~~

26 ~~(v) Any prior serious or willful violation of the California~~
27 ~~Occupational Safety and Health Act of 1973, contained in Part 1~~
28 ~~(commencing with Section 6300) of Division 5 of the Labor Code,~~
29 ~~or the federal Occupational Safety and Health Act of 1970 (Public~~
30 ~~Law 91-596), settled against any member of the design-build entity,~~
31 ~~and information concerning workers' compensation experience~~
32 ~~history and worker safety program.~~

33 ~~(vi) Information concerning any debarment, disqualification,~~
34 ~~or removal from a federal, state, or local government public works~~
35 ~~project. Any instance in which an entity, its owners, officers, or~~
36 ~~managing employees submitted a bid on a public works project~~
37 ~~and were found to be nonresponsive, or were found by an awarding~~
38 ~~body not to be a responsible bidder.~~

39 ~~(vii) Any instance in which the entity, or its owners, officers,~~
40 ~~or managing employees, defaulted on a construction contract.~~

~~(viii) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), including alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements settled against any member of the design-build entity.~~

~~(ix) Information concerning the bankruptcy or receivership of any member of the design-build entity, including information concerning any work completed by a surety.~~

~~(x) Information concerning all settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the design-build entity during the five years preceding submission of a bid pursuant to this section, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.~~

~~(xi) In the case of a partnership, joint venture, or an association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all general partners, joint venturers, or association members agree to be fully liable for the performance under the design-build contract.~~

~~(B) The information required pursuant to this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.~~

~~(4) The agency shall establish a procedure for final selection of the design-build entity. Selection shall be based on either of the following criteria:~~

~~(A) A competitive bidding process resulting in lump-sum bids by the prequalified design-build entities. Awards shall be made to the lowest responsible bidder.~~

~~(B) An agency may use a design-build competition based upon best value and other criteria set forth in paragraph (2). The design-build competition shall include the following elements:~~

~~(i) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the~~

1 request for proposal. However, the following minimum factors
2 shall each represent at least 10 percent of the total weight of
3 consideration given to all criteria factors: price, technical design
4 and construction expertise, life-cycle costs over 15 years or more,
5 skilled labor force availability, and acceptable safety record.

6 (ii) ~~Once the evaluation is complete, the top three responsive~~
7 ~~bidders shall be ranked sequentially from the most advantageous~~
8 ~~to the least.~~

9 (iii) ~~The award of the contract shall be made to the responsible~~
10 ~~bidder whose proposal is determined, in writing, to be the most~~
11 ~~advantageous.~~

12 (iv) ~~Notwithstanding any provision of this code, upon issuance~~
13 ~~of a contract award, the agency shall publicly announce its award,~~
14 ~~identifying the contractor to whom the award is made, along with~~
15 ~~a written decision supporting its contract award and stating the~~
16 ~~basis of the award. The notice of award shall also include the~~
17 ~~agency's second- and third-ranked design-build entities.~~

18 (v) ~~For purposes of this paragraph, skilled labor force availability~~
19 ~~shall be determined by the existence of an agreement with a~~
20 ~~registered apprenticeship program, approved by the California~~
21 ~~Apprenticeship Council, which has graduated apprentices in each~~
22 ~~of the preceding five years. This graduation requirement shall not~~
23 ~~apply to programs providing apprenticeship training for any craft~~
24 ~~that has been deemed by the Department of Labor and the~~
25 ~~Department of Industrial Relations to be an apprenticeable craft~~
26 ~~in the five years prior to enactment of this act.~~

27 (vi) ~~For purposes of this paragraph, a bidder's safety record~~
28 ~~shall be deemed acceptable if its experience modification rate for~~
29 ~~the most recent three-year period is an average of 1.00 or less, and~~
30 ~~its average total recordable injury/illness rate and average lost~~
31 ~~work rate for the most recent three-year period does not exceed~~
32 ~~the applicable statistical standards for its business category or if~~
33 ~~the bidder is a party to an alternative dispute resolution system as~~
34 ~~provided for in Section 3201.5 of the Labor Code.~~

35 (e) (1) ~~Any design-build entity that is selected to design and~~
36 ~~build a project pursuant to this section shall possess or obtain~~
37 ~~sufficient bonding to cover the contract amount for nondesign~~
38 ~~services, and errors and omission insurance coverage sufficient to~~
39 ~~cover all design and architectural services provided in the contract.~~
40 ~~This section does not prohibit a general or engineering contractor~~

1 from being designated the lead entity on a design-build entity for
2 the purposes of purchasing necessary bonding to cover the activities
3 of the design-build entity.

4 (2) Any payment or performance bond written for the purposes
5 of this section shall be written using a bond form developed by
6 the agency.

7 (f) All subcontractors that were not listed by the design-build
8 entity in accordance with clause (i) of subparagraph (A) of
9 paragraph (3) of subdivision (d) shall be awarded by the
10 design-build entity in accordance with the design-build process
11 set forth by the agency in the design-build package. All
12 subcontractors bidding on contracts pursuant to this section shall
13 be afforded the protections contained in Chapter 4 (commencing
14 with Section 4100) of Part 1. The design-build entity shall do both
15 of the following:

16 (1) Provide public notice of the availability of work to be
17 subcontracted in accordance with the publication requirements
18 applicable to the competitive bidding process of the agency.

19 (2) Provide a fixed date and time on which the subcontracted
20 work will be awarded in accordance with the procedure established
21 pursuant to this section.

22 (g) The minimum performance criteria and design standards
23 established pursuant to paragraph (1) of subdivision (d) shall be
24 adhered to by the design-build entity. Any deviations from those
25 standards may only be allowed by written consent of the agency.

26 (h) The agency may retain the services of a design professional
27 or construction project manager, or both, throughout the course of
28 the project in order to ensure compliance with this section.

29 (i) Contracts awarded pursuant to this section shall be valid until
30 the project is completed.

31 (j) Nothing in this section is intended to affect, expand, alter,
32 or limit any rights or remedies otherwise available at law.

33 (k) (1) If the agency elects to award a project pursuant to this
34 section, retention proceeds withheld by the agency from the
35 design-build entity shall not exceed 5 percent if a performance and
36 payment bond, issued by an admitted surety insurer, is required in
37 the solicitation of bids.

38 (2) In a contract between the design-build entity and the
39 subcontractor, and in a contract between a subcontractor and any
40 subcontractor thereunder, the percentage of the retention proceeds

1 withheld shall not exceed the percentage specified in the contract
2 between the agency and the design-build entity. If the design-build
3 entity provides written notice to any subcontractor who is not a
4 member of the design-build entity, prior to or at the time the bid
5 is requested, that a bond may be required and the subcontractor
6 subsequently is unable or refuses to furnish a bond to the
7 design-build entity, then the design-build entity may withhold
8 retention proceeds in excess of the percentage specified in the
9 contract between the agency and the design-build entity from any
10 payment made by the design-build entity to the subcontractor.

11 (l) Each agency that elects to proceed under this section and
12 uses the design-build method on a public works project shall submit
13 to the Legislative Analyst's Office before December 1, 2014, a
14 report containing a description of each public works project
15 procured through the design-build process after January 1, 2010,
16 and before November 1, 2014. The report shall include, but shall
17 not be limited to, all of the following information:

- 18 (1) The type of project.
- 19 (2) The gross square footage of the project.
- 20 (3) The design-build entity that was awarded the project.
- 21 (4) Where appropriate, the estimated and actual length of time
22 to complete the project.
- 23 (5) The estimated and actual project costs.
- 24 (6) A description of any written protests concerning any aspect
25 of the solicitation, bid, proposal, or award of the design-build
26 project, including the resolution of the protests.
- 27 (7) An assessment of the prequalification process and criteria.
- 28 (8) An assessment of the effect of retaining 5-percent retention
29 on the project.
- 30 (9) A description of the labor force compliance program and an
31 assessment of the project impact, where required.
- 32 (10) A description of the method used to award the contract. If
33 best value was the method, the report shall describe the factors
34 used to evaluate the bid, including the weighting of each factor
35 and an assessment of the effectiveness of the methodology.
- 36 (11) An assessment of the project impact of skilled labor force
37 availability.
- 38 (12) An assessment of the design-build dollar limits on agency
39 projects. This assessment shall include projects where the agency
40 wanted to use design-build and was precluded by the dollar

1 limitation. This assessment shall also include projects where the
2 best value method was not used due to dollar limitations.

3 ~~(13) An assessment of the most appropriate uses for the~~
4 ~~design-build approach.~~

5 ~~(m) (1) In order to comply with paragraph (2) of subdivision~~
6 ~~(a), the State Public Works Board is required to maintain the list~~
7 ~~of agencies that have applied and are eligible to be qualified for~~
8 ~~this authority.~~

9 ~~(2) Each agency that is interested in proceeding under the~~
10 ~~authority in this section must apply to the State Public Works~~
11 ~~Board. The application to proceed shall be in writing and contain~~
12 ~~such information that the State Public Works Board may require.~~

13 ~~(3) The State Public Works Board shall approve or deny an~~
14 ~~application, in writing, within 90 days of the submission of a~~
15 ~~complete application. The authority to deny an application shall~~
16 ~~only be exercised if the condition set forth in paragraph (2) of~~
17 ~~subdivision (a) has been satisfied.~~

18 ~~(4) An agency that has applied for this authorization shall, after~~
19 ~~it determines it no longer is interested in using this authority, notify~~
20 ~~the State Public Works Board in writing within 30 days of its~~
21 ~~determination. Upon notification, the State Public Works Board~~
22 ~~may contact any previous applicants, denied pursuant to paragraph~~
23 ~~(2) of subdivision (a), to inform them of the availability to proceed~~
24 ~~under this section.~~

25 ~~(5) The State Public Works Board may authorize no more than~~
26 ~~10 projects. The board shall not authorize or approve more than~~
27 ~~two projects for any one eligible redevelopment agency that~~
28 ~~submits a completed application.~~

29 ~~(6) The State Public Works Board shall notify the Legislative~~
30 ~~Analyst's Office when 10 projects have been approved.~~

31 ~~(n) On or before January 1, 2015, the Legislative Analyst shall~~
32 ~~report to the Legislature on the use of the design-build method by~~
33 ~~agencies pursuant to this section, including the information listed~~
34 ~~in subdivision (l). The report may include recommendations for~~
35 ~~modifying or extending this section.~~

36 ~~(o) Except as provided in this section, nothing in this act shall~~
37 ~~be construed to affect the application of any other law.~~

38 ~~(p) This section shall remain in effect only until January 1, 2016,~~
39 ~~and as of that date is repealed, unless a later enacted statute, that~~
40 ~~is enacted before January 1, 2016, deletes or extends that date.~~

1 SEC. 13. Chapter 4 (commencing with Section 22160) is added
2 to Part 3 of Division 2 of the Public Contract Code, to read:

3
4 CHAPTER 4. LOCAL AGENCY DESIGN-BUILD PROJECTS
5

6 22160. (a) The Legislature finds and declares that the
7 design-build method of project delivery, using a best value
8 procurement methodology, has been authorized for various
9 agencies that have reported benefits from such projects including
10 reduced project costs, expedited project completion, and design
11 features that are not achievable through the traditional
12 design-bid-build method.

13 (b) It is the intent of the Legislature that the following occur:

14 (1) This article provides general authorization for local agencies
15 to use design-build for projects, excluding projects on the state
16 highway system.

17 (2) This article shall not be deemed to provide a preference for
18 the design-build method over other procurement methodologies.

19 22161. For purposes of this article, the following definitions
20 apply:

21 (a) “Best value” means a value determined by evaluation of
22 proposals with reference to specified criteria objectively applied,
23 including, but not limited to, price, quality of technical proposals,
24 qualifications of key personnel, and other criteria deemed
25 appropriate by the local agency. A best value determination may
26 entail selection of the lowest priced technically acceptable proposal
27 or selection of the best proposal for a fixed price established by
28 the procuring agency, or it may consist of a tradeoff between price
29 and other specified factors.

30 (b) “Construction subcontract” means each subcontract awarded
31 by the design-build entity to a subcontractor that will perform work
32 or labor or render service to the design-build entity in or about the
33 construction of the work or improvement, or a subcontractor
34 licensed by the State of California that, under subcontract to the
35 design-build entity, specially fabricates and installs a portion of
36 the work or improvement according to detailed drawings contained
37 in the plans and specifications produced by the design-build team.

38 (c) “Design-build” means a project delivery process in which
39 both the design and construction of a project are procured from a
40 single entity.

(d) “Design-build entity” means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed pursuant to a design-build contract.

(e) “Design-build team” means the design-build entity itself and the individuals and other entities identified by the design-build entity as members of its team.

(f) “Local agency” means the following:

(1) A city, county, or city and county.

(2) A special district that operates wastewater facilities, solid waste management facilities, or water recycling facilities.

(3) Any transit district, included transit district, municipal operator, included municipal operator, or transit development board, as defined in Section 99210 of the Public Utilities Code, or a consolidated agency, as defined in Section 132353.1 of the Public Utilities Code, or any joint powers authority formed to provide transit service.

22162. (a) Notwithstanding any other law, a local agency, with approval of its governing body, may procure design-build contracts for public works projects in excess of one million dollars (\$1,000,000), awarding the contract either the low bid or the best value, provided that this article shall not apply to any projects on the state highway system.

(b) The local agency shall develop guidelines for a standard organizational conflict-of-interest policy, consistent with applicable law, regarding the ability of a person or entity, that performs services for the local agency relating to the solicitation of a design-build project, to submit a proposal as a design-build entity, or to join a design-build team. This conflict-of-interest policy shall apply to each local agency entering into design-build contracts authorized under this article.

22163. (a) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the local agency shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code.

1 All moneys collected pursuant to this subdivision shall be deposited
2 in the State Public Works Enforcement Fund, created by Section
3 1771.3 of the Labor Code, and shall, subject to appropriation by
4 the Legislature, be used only for enforcement of prevailing wage
5 requirements on those projects.

6 (b) In lieu of reimbursing the Department of Industrial Relations
7 for its reasonable and directly related costs of performing
8 monitoring and enforcement on public works projects, the local
9 agency may elect to continue operating an existing previously
10 approved labor compliance program to monitor and enforce
11 prevailing wage requirements on the project if it has either not
12 contracted with a third party to conduct its labor compliance
13 program and requests and receives approval from the department
14 to continue its existing program or it enters into a collective
15 bargaining agreement that binds all of the contractors performing
16 work on the project and that includes a mechanism for resolving
17 disputes about the payment of wages.

18 22164. The procurement process for the design-build projects
19 shall progress as follows:

20 (a) The local agency shall prepare a set of documents setting
21 forth the scope and estimated price of the project. The documents
22 may include, but need not be limited to, the size, type, and desired
23 design character of the project, performance specifications covering
24 the quality of materials, equipment, workmanship, preliminary
25 plans or building layouts, or any other information deemed
26 necessary to describe adequately the local agency's needs. The
27 performance specifications and any plans shall be prepared by a
28 design professional who is duly licensed and registered in
29 California.

30 (b) Based on the documents prepared under subdivision (a), the
31 local agency shall prepare and issue a request for qualifications in
32 order to prequalify or short-list the design-build entities whose
33 proposals shall be evaluated for final selection. The request for
34 qualifications shall include, but need not be limited to, the
35 following elements:

36 (1) Identification of the basic scope and needs of the project or
37 contract, the expected cost range, the methodology that will be
38 used by the local agency to evaluate proposals, the procedure for
39 final selection of the design-build entity, and any other information

1 deemed necessary by the local agency to inform interested parties
2 of the contracting opportunity.

3 (2) (A) Significant factors that the local agency reasonably
4 expects to consider in evaluating qualifications, including technical
5 design and construction expertise, skilled labor force availability,
6 and all other nonprice-related factors.

7 (B) For purposes of subparagraph (A), skilled labor force
8 availability shall be deemed satisfied by the existence of an
9 agreement with a registered apprenticeship program, approved by
10 the California Apprenticeship Council, that has graduated at least
11 one apprentice in each of the preceding five years. This graduation
12 requirement shall not apply to programs providing apprenticeship
13 training for any craft that was first deemed by the federal
14 Department of Labor and the Department of Industrial Relations
15 to be an apprenticeable craft within the five years prior to the
16 effective date of this article.

17 (3) A standard template request for statements of qualifications
18 prepared by the local agency. In preparing the standard template,
19 the local agency may consult with the construction industry, the
20 building trades and surety industry, and other local agencies
21 interested in using the authorization provided by this article. The
22 template shall require the following information:

23 (A) If the design-build entity is a privately held corporation,
24 limited liability company, partnership, or joint venture, a listing
25 of all of the shareholders, partners, or members known at the time
26 of statement of qualification submission who will perform work
27 on the project.

28 (B) Evidence that the members of the design-build team have
29 completed, or demonstrated the experience, competency, capability,
30 and capacity to complete projects of similar size, scope, or
31 complexity, and that proposed key personnel have sufficient
32 experience and training to competently manage and complete the
33 design and construction of the project, and a financial statement
34 that ensures that the design-build entity has the capacity to
35 complete the project.

36 (C) The licenses, registration, and credentials required to design
37 and construct the project, including, but not limited to, information
38 on the revocation or suspension of any license, credential, or
39 registration.

1 (D) Evidence that establishes that the design-build entity has
2 the capacity to obtain all required payment and performance
3 bonding, liability insurance, and errors and omissions insurance.

4 (E) Information concerning workers' compensation experience
5 history and a worker safety program.

6 (F) If the proposed design-build entity is a corporation, limited
7 liability company, partnership, joint venture, or other legal entity,
8 a copy of the organizational documents or agreement committing
9 to form the organization.

10 (G) An acceptable safety record. A proposer's safety record
11 shall be deemed acceptable if its experience modification rate for
12 the most recent three-year period is an average of 1.00 or less, and
13 its average total recordable injury or illness rate and average lost
14 work rate for the most recent three-year period does not exceed
15 the applicable statistical standards for its business category or if
16 the proposer is a party to an alternative dispute resolution system
17 as provided for in Section 3201.5 of the Labor Code.

18 (4) (A) The information required under this subdivision shall
19 be certified under penalty of perjury by the design-build entity and
20 its general partners or joint venture members.

21 (B) Information required under this subdivision that is not
22 otherwise a public record under the California Public Records Act
23 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
24 Title 1 of the Government Code) shall not be open to public
25 inspection.

26 (c) Based on the documents prepared as described in subdivision
27 (a), the local agency shall prepare a request for proposals that
28 invites prequalified or short-listed entities to submit competitive
29 sealed proposals in the manner prescribed by the local agency.
30 The request for proposals shall include, but need not be limited
31 to, the following elements:

32 (1) Identification of the basic scope and needs of the project or
33 contract, the estimated cost of the project, the methodology that
34 will be used by the local agency to evaluate proposals, whether
35 the contract will be awarded on the basis of low bid or best value,
36 and any other information deemed necessary by the local agency
37 to inform interested parties of the contracting opportunity.

38 (2) Significant factors that the local agency reasonably expects
39 to consider in evaluating proposals, including, but not limited to,
40 cost or price and all nonprice-related factors.

1 (3) The relative importance or the weight assigned to each of
2 the factors identified in the request for proposals.

3 (4) Where a best value selection method is used, the local agency
4 may reserve the right to request proposal revisions and hold
5 discussions and negotiations with responsive proposers, in which
6 case the local agency shall so specify in the request for proposals
7 and shall publish separately or incorporate into the request for
8 proposals applicable procedures to be observed by the local agency
9 to ensure that any discussions or negotiations are conducted in
10 good faith.

11 (d) For those projects utilizing low bid as the final selection
12 method, the competitive bidding process shall result in lump-sum
13 bids by the prequalified or short-listed design-build entities, and
14 awards shall be made to the design-build entity that is the lowest
15 responsible bidder.

16 (e) For those projects utilizing best value as a selection method,
17 the design-build competition shall progress as follows:

18 (1) Competitive proposals shall be evaluated by using only the
19 criteria and selection procedures specifically identified in the
20 request for proposals.

21 (2) Pursuant to subdivision (c), the local agency may hold
22 discussions or negotiations with responsive proposers using the
23 process articulated in the local agency's request for proposals.

24 (3) When the evaluation is complete, the responsive proposers
25 shall be ranked based on a determination of value provided,
26 provided that no more than three proposers are required to be
27 ranked.

28 (4) The award of the contract shall be made to the responsible
29 design-build entity whose proposal is determined by the local
30 agency to have offered the best value to the public.

31 (5) Notwithstanding any other provision of this code, upon
32 issuance of a contract award, the local agency shall publicly
33 announce its award, identifying the design-build entity to which
34 the award is made, along with a written decision supporting its
35 contract award and stating the basis of the award.

36 (6) The written decision supporting the local agency's contract
37 award, described in paragraph (5), and the contract file shall
38 provide sufficient information to satisfy an external audit.

39 22165. (a) The design-build entity shall provide payment and
40 performance bonds for the project in the form and in the amount

1 required by the local agency, and issued by a California admitted
2 surety. The amount of the payment bond shall not be less than the
3 amount of the performance bond.

4 (b) The design-build contract shall require errors and omissions
5 insurance coverage for the design elements of the project.

6 (c) The local agency shall develop a standard form of payment
7 and performance bond for its design-build projects.

8 22166. (a) The local agency, in each design-build request for
9 proposals, may identify specific types of subcontractors that must
10 be included in the design-build entity statement of qualifications
11 and proposal. All construction subcontractors that are identified
12 in the proposal shall be afforded all the protections of Chapter 4
13 (commencing with Section 4100) of Part 1.

14 (b) Following award of the design-build contract, the
15 design-build entity shall proceed as follows in awarding
16 construction subcontracts with a value exceeding one-half of 1
17 percent of the contract price allocable to construction work:

18 (1) Provide public notice of availability of work to be
19 subcontracted in accordance with the publication requirements
20 applicable to the competitive bidding process of the local agency,
21 including a fixed date and time on which qualifications statements,
22 bids, or proposals will be due.

23 (2) Establish reasonable qualification criteria and standards.

24 (3) Award the subcontract either on a best value basis or to the
25 lowest responsible bidder. The process may include prequalification
26 or short-listing. The foregoing process does not apply to
27 construction subcontractors listed in the original proposal.
28 Subcontractors awarded construction subcontracts under this
29 subdivision shall be afforded all the protections of Chapter 4
30 (commencing with Section 4100) of Part 1.

31 22167. (a) If the local agency elects to award a project pursuant
32 to this article, retention proceeds withheld by the local agency
33 from the design-build entity shall not exceed 5 percent, except as
34 otherwise specified in this section.

35 (b) (1) In a contract between the design-build entity and the
36 subcontractor, and in a contract between a subcontractor and any
37 subcontractor thereunder, the percentage of the retention proceeds
38 withheld may not exceed the percentage specified in the contract
39 between the local agency and the design-build entity.

(2) This subdivision shall not apply if the design-build entity provides written notice to any subcontractor that is not a member of the design-build entity, prior to, or at the time the bid is requested from the subcontractor, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the design-build entity, then the design-build entity may withhold retention proceeds in excess of the percentage specified in the contract between the local agency and the design-build entity from any payment made by the design-build entity to the subcontractor.

(3) Notwithstanding any other provision of this chapter, the retention proceeds withheld from any payment by a local agency from the original design-build entity, by the original design-build entity contractor from any subcontractor, and by a subcontractor from any subcontractor thereunder, may exceed 5 percent on specific projects if the governing body of the public entity or designee, including, but not limited to, a general manager or other director of an appropriate department, has approved a finding during a properly noticed and normally scheduled public hearing and prior to the proposal due date that the project is substantially complex and therefore requires a higher retention amount than 5 percent, and the local agency includes both this finding and the actual retention amount in the procurement documents.

22168. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

SEC. 14. The Legislature finds and declares that Sections 5 and 13 of this act impose a limitation on the public's right to access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article 1 of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Department of General Services, the Department of Corrections and Rehabilitation, and local agencies to fully accomplish its goals efficiently and economically, it is necessary to enact legislation that generally limits access to, and release of, records related to design-build.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O